

No. 12294

United States
Court of Appeals
For the Ninth Circuit.

KURT GUSTAF NORDGREN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

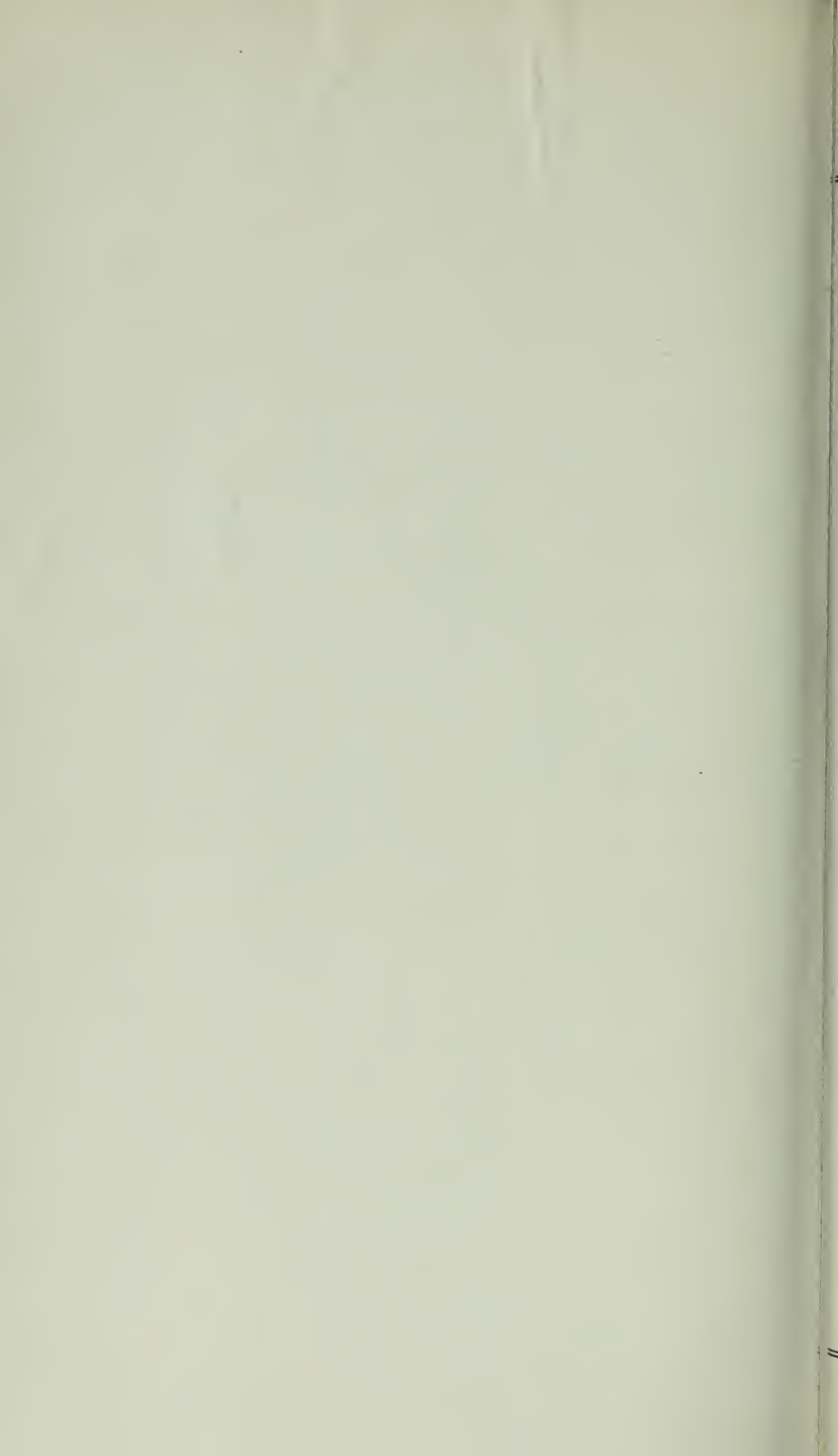
Transcript of Record

Appeal from the District Court for the Territory of Alaska,
Division Number One

FILED

SEP 26 1949

PAUL P. O'BRIEN,
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

HOWARD D. STABLER,

Juneau, Alaska,

For Appellant.

P. J. GILMORE, JR., U. S. Attorney,

Juneau, Alaska,

For Appellees.

In the District Court for the Territory of Alaska,
Division Number One, at Juneau

No. 2505-B

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KURT GUSTAF NORDGREN,

Defendant.

INDICTMENT

Vio. Sec. 91 of Title 18, U.S.C.A. 1946
(Bribery).

The Grand Jury Charges:

On or about the 12th day of August, 1948, in Division Number One, Territory of Alaska, Kurt Gustaf Nordgren did knowingly, wilfully, unlawfully and feloniously offer and give William McKenzie the sum of Two Hundred (\$200) Dollars in lawful money of the United States; said William McKenzie being a person acting for and on behalf of the United States in an official function, under and by authority of the Fish and Wildlife Service, United States Department of the Interior, whose duties were to observe the area of Red Fish Bay, Baranof Island, Alaska, then and there closed to commercial fishing for salmon, to report and disclose to officials of said Fish and Wildlife Service, and other law enforcement officials, and to arrest and cause the arrest and prosecution of, all persons

fishing illegally for salmon in said closed area; knowing said William McKenzie was a person acting for and on behalf of the United States in an official function with duties as aforesaid, and with the intention on the part of said Kurt Gustaf Nordgren to influence and induce William McKenzie to do an act in violation of his lawful duties, that is to say, to unlawfully refrain from and omit to report and disclose to officials of the Fish and Wildlife Service and other law enforcement officials that said Kurt Gustaf Nordgren did fish illegally in said area closed to commercial fishing for salmon, and to refrain from arresting or causing the arrest and prosecution of said Kurt Gustaf Nordgren for fishing illegally in said area.

A True Bill:

THOMAS A. MORGAN,
P. J. GILMORE, JR.,
U. S. Attorney;

Witnesses:

GOMER W. HILSINGER,
WM. McKENZIE.

[Title of District Court and Cause.]

VERDICT

We, the Jury empaneled and sworn in the above entitled cause, find the defendant guilty as charged in the Indictment.

Dated at Juneau, Alaska, this 19th day of April, 1949.

E. K. GUERIN,
Foreman.

[Endorsed]: Filed March 20, 1949.

In the District Court for the Territory of Alaska,
Division Number One at Juneau

No. 2505-B

UNITED STATES OF AMERICA,
Plaintiff,
vs.

KURT GUSTAF NORDGREN,
Defendant.

JUDGMENT AND COMMITMENT

Now, to wit, on this 22nd day of April, 1949, this matter came before the Court for imposition of sentence on the above-named defendant, Kurt Gustaf Nordgren, upon the verdict of the jury duly empaneled, sworn and charged in the above-entitled cause and returned into Court on the 20th day of

April, 1949, by which verdict the above-named defendant, Kurt Gustaf Nordgren, was found guilty of the crime of Bribery, in violation of Section 91, Title 18, United States Code Annotated, 1946 ed., as charged in the indictment heretofore returned by the Grand Jury and filed herein on the 7th day of March, 1949; the defendant being present and represented by his counsel, Howard D. Stabler; Stanley D. Baskin, Assistant U. S. Attorney, appearing for and on behalf of the United States; the defendant being asked if he had any good and sufficient reason to state why sentence should not now be imposed upon him, to which he offered none, and the Court being fully advised in the premises,

Hereby Orders, Adjudges and Decrees that it is the Judgment of the Court that the defendant, Kurt Gustaf Nordgren, is guilty of the crime of Bribery, as set out in Section 91, Title 18, United States Code Annotated, 1946 ed., as charged in the indictment, and it is the Sentence of the Court that the defendant, Kurt Gustaf Nordgren, be imprisoned in the Federal Penitentiary at McNeil Island, Washington, or such other institution as the Attorney General of the United States may direct, for a period of Fourteen (14) Months, and pay a fine of Two Hundred Dollars (\$200.00), and that the said defendant, Kurt Gustaf Nordgren, stand committed until the sentence herein imposed is fully executed, and

It Is Further Ordered that the Clerk deliver a certified copy of this Judgment and Commitment

to the United States Marshal or other qualified officer and that the same shall serve as a commitment herein.

Done in open court this 22nd day of April, 1949.

GEORGE W. FOLTA,

District Judge.

[Endorsed]: Filed May 11, 1949. [4*]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Comes now the defendant Kurt Gustaf Nordgren and moves the court to grant him a new trial for the following reasons:

1. The evidence submitted on the part of the prosecution showed that William McKenzie accepted the bribe from the defendant, and was therefore an accomplice in the commission of the offense charged, and there was no corroboration of the accomplice testimony as required by section 66-13-59 ACLA 1949; and the court failed to instruct the jury that the testimony of an accomplice ought to be viewed with distrust, as required by subdivision fourth of section 58-5-1 ACLA 1949.

2. The prosecution failed to show or prove the offense of bribery charged in the indictment, or any offense, because the evidence submitted failed to show that William McKenzie, the alleged bribe taker, was an officer of the United States, or a per-

* Page numbering appearing at bottom of page of original certified Transcript of Record.

son acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government, as charged in the indictment, within the meaning of section 91, Title 18 USCA.

3. Instruction No. 6 given by the court was erroneous in this: The Court charged that William McKenzie was, at the time charged in the indictment:

“a person acting for and on behalf of the United States in the function of conserving and protecting the commercial salmon fisheries of Alaska, under and by authority of the Department of the Interior” whereas section 91, Title 18 USCA, defining the offense charged requires that said function be an “official function.”

4. Instruction No. 7 given by the court was erroneous in this: The Court charged that,

“If you find from the evidence beyond a reasonable doubt that the defendant on or about August 12, 1948, offered or gave \$200 to William McKenzie, then and there a person acting for and on behalf of the United States, under and by authority of the Department of the Interior, in apprehending or arresting or causing the apprehension, arrest or conviction of persons fishing commercially for salmon in the closed waters of Red Fish Bay, knowing that he was such a person . . . you should convict him”

in that it directs a conviction if the defendant knew William McKenzie was “a person acting for or on

behalf of the United States, under and by authority of the Department of the Interior," and performing the duties stated, whereas section 91, Title 18 USCA, defining the alleged offense charged in the indictment would require the said William McKenzie to be acting for and on behalf of the United States in an "official function," under and by authority of the Department of the Interior. [5]

5. The court erred in denying the defendant's motion for acquittal at the conclusion of the Government's evidence, and at the conclusion of all the evidence.

6. The court erred in refusing to give defendant's instruction No. 1.

7. The verdict is contrary to the weight of the evidence.

8. The verdict is not supported by substantial evidence.

9. Other manifest error appearing of record to which objection was taken and exception reserved.

Dated: Juneau, Alaska, April 25, 1949.

HOWARD D. STABLER,
Attorney for Defendant.

Copy hereof received April 25, 1949.

STANLEY D. BASKIN,
Assistant U. S. Attorney.

[Endorsed]: Filed April 2, 1949. [6]

[Title of District Court and Cause.]

SUPPLEMENTAL MOTION FOR NEW TRIAL

Comes now the defendant Kurt Gustav Nordgren and moves the Court to grant him a new trial for the following supplemental reason:

10. The prosecution's evidence failed to show that said William McKenzie had the duty or authority to apprehend or arrest or cause the apprehension or arrest or conviction of persons fishing commercially for salmon in the closed waters of Red Fish Bay for the reason that the prosecution failed to show that said William McKenzie was an officer or employee of the Fish and Wild Life Service of the Department of the Interior "designated by the Director" of the Fish and Wild Life Service of the Department of the Interior so as to be a peace officer as required by section 227 Title 48 United States Code; or authorized by the Secretary of the Interior to enforce the fisheries laws and regulations as prescribed by section 192 Title 48 United States Code, or was a law enforcement officer as prescribed by section 248a Title 48 United States Code.

Dated: Juneau, Alaska, April 28, 1949.

HOWARD D. STABLER,
Attorney for Defendant.

Copy hereof received April 28, 1949.

STANLEY D. BASKIN,
Assistant U. S. Attorney.

[Endorsed]: Filed April 28, 1949. [7]

[Title of District Court and Cause.]

ORDER DENYING MOTION AND SUPPLEMENTAL MOTION FOR NEW TRIAL

On April 29, 1949, this matter came before the above entitled court on the defendant's motion and supplemental motion for new trial, attorney Howard D. Stabler appearing for the defendant, and Assistant United States Attorney Stanley Baskin appearing for the United States. Argument was had and the matter taken under advisement by the court.

Now, the law and the premises being fully understood and considered by the court, it is Ordered that said motion and supplemental motion for new trial be, and they are hereby, denied; and exception is allowed the defendant.

Done in open court at Juneau, Alaska, the 11th day of May, 1949.

GEORGE W. FOLTA,
District Judge.

Copy hereof received May 11, 1949.

STANLEY D. BASKIN,
Assistant U. S. Attorney.

[Endorsed]: Filed May 11, 1949. [8]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: Kurt Gustaf Nordgren.

Name and address of appellant's attorney: Howard D. Stabler, Postoffice box 546, Juneau, Alaska.

Offense: Bribery, in violation of section 91 Title 18 United States Code.

Concise statement of judgment or order, giving date, and any sentence:

Judgment entered as of April 22, 1949, finding the appellant guilty of the offense of bribery, in violation of section 91 Title 18 United States Code, as charged in the indictment, and sentencing him to serve fourteen (14) months imprisonment in McNeil Island Penitentiary, in the State of Washington, or such other penal institution as the Attorney General of the United States may direct, and to pay a fine of \$200.00.

Name of institution where now confined, if not on bail: Federal Jail, at Juneau, Alaska.

I, the above named appellant, hereby appeal to the United States Court of Appeals from the above stated judgment.

Dated: Juneau, Alaska, the 12th day of May, 1949.

/s/ KURT GUSTAF NORDGREN,
Appellant.

Copy hereof received the 12th day of May, 1949.

STANLEY D. BASKIN,
Assistant U. S. Attorney.

[Endorsed]: Filed May 12, 1949. [9]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF RECORD

Be It Remembered, that on the 18th day of April, 1949, at 10:00 o'clock a.m., at Juneau, Alaska, the above-entitled cause came on for trial before a jury, the Honorable George W. Folta, United States District Judge, presiding; the Government appearing by Stanley D. Baskin, Assistant United States Attorney, and Ernest E. Bailey, Assistant United States Attorney; the defendant appearing in person and by Howard D. Stabler, his attorney; and both sides having announced they were ready to proceed;

Thereupon, a jury was duly empaneled and sworn to try the cause; whereupon, Stanley D. Baskin, Assistant United States Attorney, made the opening statement to the jury in behalf of the Government; and thereafter Howard D. Stabler, attorney for the defendant, made the opening statement to the jury in behalf of the defendant;

Whereupon, the trial proceeded as follows: [12]

GOVERNMENT'S CASE

WILLIAM McKENZIE

called as a witness on behalf of the Government, being first duly sworn, testified as follows on

Direct Examination

By Mr. Baskin:

Q. What is your name?

A. William McKenzie.

(Testimony of William McKenzie.)

Q. Where do you reside, Mr. McKenzie?

A. I live in Juneau, Alaska.

Q. How long have you lived here in Juneau?

A. I have been around here since 1900 off and on.

Q. Are you acquainted with Kurt Gustaf Nordgren?
A. Yes.

Q. Is this Mr. Nordgren sitting over here by his counsel, Mr. Stabler?
A. That is him.

Q. Were you employed during 1948 by the Fish and Wildlife Service?
A. Yes, sir.

Q. What date were you employed by the Fish and Wildlife Service?

A. I started June 18th, and I was out at Red Fish Bay until August 21st.

Q. Is the Fish and Wildlife Service a part of the Department of Interior? [13]

A. Yes.

Q. Of the United States Government?

A. That is right.

Q. Now, you were employed on June 18th?

A. Yes, sir.

Q. That is 1948?
A. 1948.

Q. And when did you go to Red Fish Bay, Alaska?
A. It was June 22nd.

Q. 1948?
A. 1948.

Q. Now, what was your title; what was your position with the Fish and Wildlife Service?

A. Well, they call it Fishery Patrol Agent now. It used to be known as Stream Watchman.

(Testimony of William McKenzie.)

Q. It used to be known as Stream Watchman?

A. Yes.

Q. Tell the jury what your duties were in connection with your employment.

A. That was a closed area in there. When you come in there, there is a narrows there, and there is a sign up that fishing is closed from there on in; and I was to see that no one fished in that area; that was my duties.

Q. You were employed to watch Red Fish Bay?

A. Yes, sir. [14]

Q. Where is Red Fish Bay located; what island is it?

A. Baranof Island.

Q. And that is in Southeastern Alaska?

A. Yes.

Q. Is that the southeastern end of Baranof Island?

A. The southwest end.

Q. What part of that bay was closed to commercial fishing for salmon?

A. What they call the second narrows; there is a sign there, and from there in it is closed.

Q. From the narrows on up to the head of the bay?

A. That is right.

Q. To where the stream runs into the bay?

A. Yes, sir.

Q. And you were to watch that closed area?

A. Yes, sir.

Q. Were you to report to the Fish and Wildlife Service any persons who came in that closed area and fished?

A. Yes, sir.

(Testimony of William McKenzie.)

Q. Did you see the defendant—I will ask you this further question. Did you have any further instructions regarding the arrest of anybody who might——

A. No, there wasn't much said about that.

Q. About the arresting of a person who violated——

Mr. Baskin: Your Honor, I would like to put this map [15] on the board.

The Court: Can it be stipulated by counsel in this case that Red Fish Bay was a closed area?

Mr. Stabler: Yes.

Mr. Baskin: Yes.

The Court: The record may show that Red Fish Bay was a closed area.

Mr. Stabler: We stipulate that the area was open but the Bay was closed.

The Court: You mean the larger area?

Mr. Stabler: Yes; outside of these narrows, he speaks of, was open.

Mr. Baskin: That is good.

The Court: All right.

Q. Now, Mr. McKenzie, will you come down here, please? Will you point out to the jury where Red Fish Bay is situated on Baranof Island? Here is Baranof Island.

A. I don't see it very good.

Q. Let's get another map. It is too small. Now, Mr. McKenzie, I show you a map marked 28253 and ask you to point out on the map where Red Fish Bay is located.

(Testimony of William McKenzie.)

A. Here is Red Fish Bay.

Q. And that is on the south end of Baranof Island? A. That is right.

Q. Now, the narrows you mentioned a while ago, point out to [16] the jury on the map as to where the narrows, the second narrows, are situated. A. Here is the second narrows.

Q. And the stream which you mentioned you were to watch is the one that runs into the north end of Red Fish Bay; is that correct?

A. Yes.

Mr. Baskin: As I understand it, the stipulation was that the area north of the second narrows was closed to salmon fishing.

The Court: It was stipulated that whatever area was closed by regulation was closed. But it still remains to be shown on the chart approximately the line that marks the southern extremity of the closed area. As I understand from what the witness or someone said, the closed area was north of the narrows. Is that correct?

Mr. Baskin: I will bring that out.

Q. There is shown on the map what is known as the second narrows; is that correct?

A. Yes.

Q. And denoted across the north was the closed area during the fishing season of 1948?

A. That is right.

Q. But the area which is south of the second narrows was open to fishing; is that correct? [17]

A. That is correct.

(Testimony of William McKenzie.)

The Court: I think you ought to have him make a line, preferably in red, to show the line of the closed area, otherwise the jury won't know.

Q. Draw on the map, Mr. McKenzie, approximately the points across the narrows at approximately the point which was marked showing the closed area.

A. As far as I can see, there was a sign right about here.

Q. Just draw a red line across the narrows where it was closed.

The Court: From one side to the other.

Q. Let me ask you another question. Now, the area from the red line, which you drew, north was closed to commercial fishing for salmon?

A. That is right.

Q. The area south of that was open for fishing?

A. Yes.

Q. That is all; you may take the witness chair. Now, the stream that you were watching flows into that bay north of the line drawn showing the closed area; is that right? A. Yes, sir.

Q. And all of that bay north of the red line was closed to fishing for salmon?

A. That is right.

Q. Where did you reside while you were living at Red Fish Bay? [18]

A. About three hundred feet from the mouth of the creek.

Q. That is the creek that flows into the north end of the bay?

(Testimony of William McKenzie.)

A. And on the right-hand side.

Q. About what distance from the beach were you?

A. It would be probably one hundred feet.

Q. Now, did you see the defendant Kurt Nordgren on or about August 9, 1948, at Red Fish Bay?

A. Yes, sir.

Q. Will you tell the approximate time that you first saw him?

A. Well, it was after dinner, and I lay down and I slept maybe for half an hour. I woke up and heard voices on the beach. I looked out of the tent, and there was a boat between my tent and the creek right close to the beach.

Q. Did you notice the name of the boat?

A. I couldn't tell from there but I walked over to it.

Q. Did you learn the name of the boat at any time that day?

A. Yes, sir.

Q. What was the name of that boat?

A. The "Lois W."

Q. Did you see the defendant there at that time?

A. Yes, sir.

Q. Was anyone with him?

A. Yes. Them two gentlemen sitting back there was with him.

Q. The two men on the first seat over there?

A. Yes. [19]

Q. Do you know their names?

A. Yes. Their names is Harris.

(Testimony of William McKenzie.)

Q. And they were there at the time?

A. Yes.

Q. Was there any other men aboard the boat?

A. The three of them.

Q. Mr. Nordgren and the two Harris brothers?

A. Yes.

Q. Did you engage in conversation with either of them?

A. Yes. When I went up there, Nordgren spoke to me. He said something about the fish—and I don't remember just what it was—about a thousand sockeye in the mouth of the creek. He said, "Come aboard and have some coffee." I said, "No." I thought they wanted them fish, and I didn't want to have any conversation with them, and I walked up to my tent waiting to see what they would do.

Q. What did the defendant do at that time?

A. They pulled out of the bay. They left that area.

Q. Did they come back into the bay?

A. Yes. They come back about five o'clock.

Q. Is that five p.m.? A. Five p.m.

Q. On August the 9th?

A. August the 9th.

Q. What did they do then? [20]

A. They come close to the beach, and Nordgren come ashore. He come up to my tent.

Q. Was he alone? A. He was alone.

Q. Did you engage in conversation with him?

(Testimony of William McKenzie.)

A. Well, after he got up there—but I didn't feel very easy; when I saw him coming, I didn't. I made up my mind I would agree to any proposition he had to offer. I didn't have to wait long. He said, "There is no reason why you couldn't make four hundred and fifty or five hundred dollars for yourself here." So, I said, "O.K."

Q. Did you tell him whether or not you were a Fishery Patrol Agent?

A. Before he left the tent.

Q. What did you say?

A. He said, "That is a fine boat down there." I told him it belonged to the Fish and Wildlife and that they have a fancy title now on stream watchmen, that it was Fishery Patrol Agent.

Q. And did you tell him you were a stream watchman too?

A. Them are the words I used.

Q. When he asked about the boat he saw, was that a Fish and Wildlife Service boat?

A. That is right.

Q. Did the Fish and Wildlife Service leave a boat there for [21] your use?

A. That is right.

Q. Was it an ordinary boat or a skiff?

A. One of the outboard boats that you could put an engine on, but I didn't have an engine at that time.

Q. About how long was the boat?

A. Probably twelve feet long.

(Testimony of William McKenzie.)

Q. Is it ordinarily referred to as a skiff, something like that?

A. Not exactly. My understanding is that a skiff is something you pull aboard another boat and use to go ashore. This was for an outboard motor, kind of a speed boat when the motor is on. It is not good for rowing.

Q. You didn't have a motor?

A. That is right.

Q. And the boat was about twelve feet long?

A. Yes.

Q. Did he say anything else to you then?

A. He asked me to go aboard the boat and have supper with him. I told him, "No." He said, "We are going to have pork chops." I refused again. He said, "We have beer down there." I told him no, that it was raining and I didn't want to go out and get wet. He said, "A little rain won't hurt you." I told him, "If it lets up raining, I might go down later on." [22]

Q. Did he say whether or not he would give you a share of any fish he caught there or the money?

A. Yes.

Q. What did he say in that regard?

A. After he said that about the four or five hundred dollars, he said, "We will give you a share." That is all that was said about it that I remember now.

Q. Did he say when he would do the fishing out there?

(Testimony of William McKenzie.)

A. Yes. He said, "We will fish mostly at night."

Q. After this conversation, what did Nordgren do?

A. Then he invited me to go aboard the boat.

Q. Who was present when you had that conversation? A. Just him and I.

Q. No one else was there?

A. No one else.

Q. Where were the Harris brothers?

A. They were aboard the boat.

Q. Did Nordgren leave your tent, or what did he do?

A. He got his skiff and rowed back to the "Lois W."

Q. How long did they remain in the bay at that time?

A. An hour and a half; two hours; something like that.

Q. Did they leave the bay that day or night?

A. That evening they left the bay.

Q. What time would you say they left?

A. I would say seven o'clock. I wouldn't be positive of the [23] exact time.

Q. When was the next time that you saw him?

Whereupon, the jury was duly admonished and Court recessed until 2:00 o'clock p.m., April 18, 1949, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:

(Testimony of William McKenzie.)

Mr. Baskin: Your Honor, at this time I would like to ask that all witnesses be put under the rule and be excluded from the courtroom.

The Court: All witnesses in this case will not be permitted in the courtroom until ordered to testify. The attorneys for each party will see that they are so excused.

Whereupon, the witness William McKenzie resumed the witness stand and the Direct Examination by Mr. Baskin was continued as follows:

Q. Now, Mr. McKenzie, when did you say you went to Red Fish Bay?

A. I landed there June 22nd.

Q. 1948? A. 1948.

Q. Did you go out there alone? How did you go out there?

A. I went out on a boat called the "Redwing."

Q. Is that a Fish and Wildlife Service boat?

A. Yes, sir. [24]

Q. Did you remain out there alone?

A. Yes, sir.

Q. No other Fish and Wildlife Service agent or patrolman was out there with you? A. No.

Q. How often did Fish and Wildlife Service agents see you or call on you at Red Fish Bay?

A. Once in every two weeks; they made a trip every two weeks.

Q. With reference to August 9, 1948, when was the last time a Fish and Wildlife Service boat was out at Red Fish Bay and called on you?

(Testimony of William McKenzie.)

A. The last time they were there?

Q. Yes, with reference to August 9, on or about that date.

A. The 21st of August; I believe it was Saturday. I have a calendar——

Q. I don't believe you understood my question. After June 23rd, how many times did Fish and Wildlife Service boats go into Red Fish Bay?

A. I will have to check on that. It was nineteen days before a boat showed up first.

Q. With reference to the date of August 9th, when was the last boat in there with reference to that date, any time prior to August the 9th?

A. You mean the next boat that come after that?

Q. Yes. [25]

The Court: Not after?

Q. Before August the 9th when was the last boat in there?

A. I will have to check on that. Well, I haven't got the rest of the calendar, but it was two weeks before that date.

Q. You mean on August the 9th there hadn't been a Fish and Wildlife Service boat in Red Fish Bay within the last two weeks?

A. That is right.

Q. All right. Did you have any kind or means of communication out there? A. No.

Q. Did you have any means of travel other than that one boat that you had?

A. No, I didn't.

(Testimony of William McKenzie.)

Q. And it didn't have a motor, I believe you said, or you didn't have a motor for that boat?

A. The first part of the season I was out there I didn't have no motor, but I think the trip before that they brought one out to me.

Q. On August 9th state whether or not you had a motor there?

A. Yes, there was a motor there.

Q. That was a small outboard motor?

A. Yes.

Q. What size engine was it? [26]

A. I think it would be a two and a half horsepower, something like that; but I couldn't start it.

Q. Now, will you tell the jury again, as near as you can, what you understood your duties were out at Red Fish Bay?

A. I was to see that no one took any fish out of that stream there, and report anyone fishing in that closed area.

Q. Were you to see that no one took any fish out of the bay, that part of the bay that was closed?

A. Yes, sir.

Q. As well as that stream that flows into the bay?

A. Yes, sir.

Q. After the date of August 9, 1948, when was the next time that you saw Kurt Nordgren?

A. That would be on the 12th of August.

Q. About what time of the day would you say that was?

A. About four o'clock.

Q. At four p.m.?

A. Four p.m.

(Testimony of William McKenzie.)

Q. And where was he when you saw him?

A. Well, the boat come in about that time, and they anchored in front of the place there. He come up to my tent shortly after.

Q. You mentioned "the boat." What boat was that?

A. The "Lois W."

Q. And who was on the boat? [27]

A. Kurt Nordgren and the Harris boys.

Q. And they anchored there?

A. In front of my tent.

Q. In front of your tent. Mr. McKenzie, will you come down and show on the map about where your tent was located? Now, with reference to the bay—that is, the closed area of Red Fish Bay—make a little mark about where your tent was located.

A. I can't see. But there was a platform where an old cannery was, and I had my tent on that platform.

Q. Make a little "x" mark there.

A. Here?

Q. No. Where your tent was located. That is good enough. You may be seated. And when you saw them, where were you?

A. I was sitting in front of my tent. There is two big trees there, and a plank in between them, and I was sitting on that plank.

Q. What did Mr. Nordgren do when you saw him?

A. Well, he come up and he said, "We had a

(Testimony of William McKenzie.)

long run. We ran all the way to Petersburg." He says, "We didn't want to sell the fish around the point for they would know where the fish come from." And he handed me what he said was a fish sales slip. I didn't have no reading glasses on, and so I could not read it, and so I handed it to him back. He said, "We are giving you one-sixth," and pulled out two [28] one-hundred-dollar bills and gave them to me.

Q. Now, who was present at that time?

A. Just him and I.

Q. And you were up near your tent?

A. Yes.

Q. Did he say anything to you about fishing at a later time in the bay and paying you anything for fishing in the bay?

A. Well, no, not exactly, but he said or asked me, "What is your post-office box in Juneau?" and I told him. "Well," he says, "after we make the last trip we will send you a post-office money order for the rest of it."

Q. Now, when he showed you a slip which you said was a fish slip, could you read that?

A. Now, I couldn't read it.

Q. You don't know what was stated on the fish slip then?

A. No, I don't.

Q. What did you do with it?

A. I handed it back to him.

Q. Did he take it?

A. Yes.

Q. You don't know what happened to it after that?

A. No, I don't.

(Testimony of William McKenzie.)

Q. And he gave you two one-hundred-dollar bills? A. Yes, sir.

Mr. Baskin: If the Court please, I would like to have [29] them marked for identification.

The Court: Well, why not have the Clerk take their numbers?

Mr. Baskin: That is what I am going to do, the numbers of the two one-hundred-dollar bills.

The Court: You can just state the numbers for the record.

The Clerk of the Court: L 07021621 A.

The Court: What is it, a treasury note or a national bank note?

Mr. Baskin: It is a federal reserve note.

The Court: Then it should also have that.

Mr. Baskin: And then Federal Reserve Note No. L 06995997 A.

Q. Mr. McKenzie, I show you Federal Reserve Note No. L 07021621 A, and ask you if you have seen that Federal Reserve Note before?

A. Yes. I have got the numbers of it down here.

Q. Now, tell the jury whether or not that Federal Reserve Note is one that was given you by Kurt Nordgren on or about August 12, 1948?

A. Yes, this is one of the bills that was given me.

Q. And was that given you at Red Fish Bay near your tent on that day? A. Yes, sir.

Q. Now, I show you Federal Reserve Note No. L 06995997 A, and ask you if you have seen that note before?

(Testimony of William McKenzie.)

A. Yes. Yes, that is the other one.

Q. Tell the jury if Kurt Nordgren gave that Federal Reserve Note to you on or about August 12, 1948, at Red Fish Bay, Alaska?

A. He come ashore, and I stated the other before, that after I returned the slip to him he handed me these two bills.

Q. And that is one of them; that last one you mentioned here is Federal Reserve Note No. L 06995997 A? A. Yes.

Q. They were both given to you at the same time? A. That is right.

Mr. Baskin: If the Court please, we would like—no, not right now.

The Court: Why don't you offer them in evidence now?

Mr. Baskin: Very well. We would like to offer the bills in evidence and let the jury examine them.

The Court: Well, they may be received and marked Plaintiff's Exhibit No. 1.

The Clerk of the Court: The exhibits have been put in an envelope marked Plaintiff's Exhibit No. 1.

The Court: You may show them to the jury so that the exhibits will not need to be taken into the jury room.

Whereupon, the bills were exhibited to the jury.

Q. Now, after Kurt Nordgren gave you the two one-hundred-dollar bills, what did he say?

A. He says, "We are giving you one-sixth. We sold \$1200.00 worth of fish." And then he asked

(Testimony of William McKenzie.)

me about my post-office box number, and I told him, and he says, "After the last trip we will send you the rest of the money."

Q. Now, have you received any other money from him? A. No.

Q. Did you ever get any out of your post-office box? A. No.

Q. That is, after the date of August 12, 1948—which you believe or understood to have come from Kurt Nordgren?

A. Would you repeat that please?

Q. Did you receive any money through your post-office box after August 12, 1948, which you believe to have come from or was sent by Kurt Nordgren?

A. No, I didn't receive any money at all.

Q. What did he do after that time?

A. Well, I don't remember the rest of the conversation, but he went back aboard the "Lois W" shortly after.

Q. Did he go alone? A. Yes.

Q. Did they pull anchor and leave, or what did they do?

A. No. Later in the evening I was down on the beach, and he called to me to come aboard, so he took his skiff and come [32] ashore, and I went aboard the boat with them, and then I was treated to a drink of whiskey, two stubbys of beer, and we had lunch. After lunch I was asked how I was fixed for grub. I told them, "Not very good," so

(Testimony of William McKenzie.)

they gave me a can of chicken stew, a can of corned beef, a jar of jam, and enough pork sausage to make a meal. So, shortly after that they put me ashore.

Q. Now, how long were you on his boat?

A. Probably an hour.

Q. Did they remain in the bay all that evening?

A. No. No; they put me ashore and they pulled out—oh, it was around seven or eight o'clock, something like that. I don't remember the exact time they pulled out, but they pulled out that evening.

Q. Then, they were anchored in the bay some three or four hours on the evening of August the 12th?

A. That is right.

Q. Did you see them again that evening of August the 12th?

A. No, I didn't see them.

Q. When was the next time you saw him; when was the next time you saw the defendant Nordgren?

A. It would be Sunday morning, the 15th of August.

Q. What time was that?

A. That would be five o'clock in the morning.

Q. Where was Nordgren at the time you first saw him? [33]

A. They were at the mouth of the creek.

Q. Was he on his boat?

A. Yes. They were making a haul.

Q. Was he on the "Lois W"?

A. Yes.

Q. You say, "they;" who are you speaking of?

(Testimony of William McKenzie.)

A. The two Harris boys and him.

Q. And Nordgren? A. Yes.

Q. You say, "they were making a haul;" what do you mean by that?

A. They had a purse seine—I guess you call it—and made a small circle around the mouth of the creek. They brailed up eleven brails of salmon. The last one wasn't quite full.

Q. And that was near the mouth of the creek that flows into the Red Fish Bay?

A. That is right.

Q. And that was in the part of the bay that was closed to salmon fishing? A. Yes.

Q. And you could see Nordgren during that time?

A. Yes. I was pretty close to them. I was probably less than fifty-sixty feet from them.

Q. And you identified both him and the Harris brothers? A. Yes. [34]

Q. What time did they finish that fishing operation?

A. It didn't take them very long that morning. As soon as they picked up the fish and net, they pulled out.

Q. Did you engage in conversation with them that morning? A. No. No.

Q. When did you see them again?

A. It was Monday morning, the 16th. I heard them first on the left-hand side of the tent. There was a plank there and, just as they come over and

(Testimony of William McKenzie.)

started to make a set, one man made a sound there, and the net was pretty near spread out by my tent and made a semicircle. The net got caught, and the fish got away, and there was no fish when they picked up the net.

Q. You say, "they;" who are you speaking about when you say, "they"?

A. Nordgren and the two Harris boys.

Q. Were they fishing with the boat "Lois W" at the time? A. Yes, sir.

Q. Now, did you have any conversation with them? A. No.

Q. At that time? A. Not at that time.

Q. Did they remain in the bay that day?

A. No. They pulled out.

Q. Did you see them at any other time after that? [35] A. Yes.

Q. When was it; when did you see them?

A. They came back at probably five o'clock, and I was down on the beach, and they invited me again to go aboard, so Nordgren came ashore with his boat, and I went aboard with him. He went down into the cabin and took up a bottle of whiskey. We sat on the deck, and I had three drinks of whiskey. The salmon were jumping pretty good. He said they were going to make a haul. They had salmon. I asked if I could have a salmon. He said, "Sure." He said, "They only cost about a dollar." So, I went ashore.

Q. Did he talk with you or say anything to you

(Testimony of William McKenzie.)

about what you should do while he was fishing out there? A. Yes.

Q. What did he say?

A. He said, "You shouldn't sit on the beach, while we are making a haul, that way. Go back up in the woods. Someone might come and see you sitting there, and it might be a good idea for you to put the fire out when you go back in the woods."

Q. What fire was he speaking of?

A. The fire in my tent.

Q. Was there smoke coming from that fire at the time?

A. I didn't notice at the time.

Q. Did they do any fishing after they put you ashore? [36]

A. Yes. They made another set at the mouth. This time the web got cut on the rudder, and they only got fifteen or twenty fish.

Q. And you observed them fishing there?

A. Yes.

Q. Did they fish with their seine net and out of their boat the "Lois W"? A. Yes.

Q. And you are speaking of Mr. Nordgren and the Harris brothers when you say "they"?

A. Yes; that is correct.

Q. What time did they leave the bay—that is, Red Fish Bay—that day?

A. After they made that haul; it must have been after seven o'clock or around that time.

Q. Did you see them at any time after that?

(Testimony of William McKenzie.)

A. That was the last time I saw them.

Q. You told the jury this morning, I believe, that you informed Mr. Nordgren that you were a Fishery Patrol Agent? A. Yes.

Q. When he first approached you on August the 9th?

A. Not when he first approached me, but after he come to my tent; that is in the afternoon when he come up to the tent and made the arrangements with me and spoke about the nice boat I had on the beach, and then I told him about that I [37] had a nice title to my job now—I was Fishery Patrol Agent. So, that was about the extent of it.

Q. Who paid your salary while you were working out at Red Fish Bay from June 23, 1948, until August 22, 1948?

A. The Fish and Wildlife.

Q. The Fish and Wildlife Service?

A. Yes.

Q. And were you paid by Government checks?

A. Yes.

Q. Now, how long after August 16, 1948, did you remain at Red Fish Bay?

A. I was there until the 21st of August.

Q. 1948? A. 1948.

Q. And who did you see on that day? Did anyone come into the bay?

A. The boat—I think it is called “Scouter.” It makes regular trips.

Q. Would that be the “Scoter”?

(Testimony of William McKenzie.)

A. Yes. I seen them coming and I was pretty near all ready to pull out when they got there. The boy came ashore—the deckhand—and helped me put my stuff in the boat and went out to the “Scoter.” I didn’t have much—tent, bed, stove and a little grub left, just my personal stuff that way.

Q. And you left—did you put that property aboard the boat [38] “Scoter”?

A. Yes; that is right.

Q. And did you leave the bay? A. Yes.

Q. At that time, or did you remain there?

A. Yes—the captain wanted to get to another bay near Sitka. Somebody was fishing there, and he thought probably he could catch them, and we stayed there all night.

Q. Before we got further—who did you see when you got aboard the boat “Scoter”?

A. The captain of the boat.

Q. Do you know his name?

A. If I heard it.

Q. Do you know whether it is Harndin?

A. That seems like it; and there was an engineer on the boat and cook and deckhand—four men.

Q. Did you talk with Mr. Harndin?

A. Yes. As soon as the other boys left the deck, I told him, and I am pretty sure I showed Harndin the money, and he told me——

Mr. Stabler: We object to what he told him.

(Testimony of William McKenzie.)

Q. Did you show Mr. Harndin the two one-hundred-dollar bills given you by Kurt Nordgren?

A. Yes.

Q. And did you tell him how you got the money?

A. Yes.

Q. What did you say to him?

A. Well, I told him about the "Lois W" crew bribing me, giving me the money. There wasn't much said. Some of the crew come back on deck. He told me not to say anything before the crew. Not much was said about it. He told me to turn the money over to Hillsinger, the Fish and Wildlife Agent.

Q. Did you go to Sitka after you left Red Fish Bay on the "Scoter"?

A. Yes. We got in there in the evening.

Q. Of what day was that?

A. I will have to look again. That would be Sunday evening, the 22nd.

Q. Sunday evening, August 22, 1948?

A. Yes.

Q. And you went from Red Fish Bay to Sitka on the boat "Scoter," did you not? A. Yes.

Q. After getting in Sitka did you talk with one Gomer S. Hillsinger? A. Yes.

Q. Who is he? What position did he occupy, if any, if you know?

A. He is the agent for the Fish and Wildlife, agent at Sitka. [40]

Q. You mean Fish and Wildlife Agent for the Service? A. Yes.

(Testimony of William McKenzie.)

Q. Where did you see him?

A. I went up to his office. Nobody was there. The place was locked. I come back down and ran into him on the street, so we went back to his office then, and we talked about what happened.

Mr. Stabler: We object to what he said—calling for hearsay.

The Court: Yes.

Q. Where did you first approach him? Where was he when you first approached him?

A. He was on the street in front of a cocktail bar.

Q. Did you go to the office after you first saw him? A. Yes.

Q. Did he go with you? A. Yes.

Q. That is, to the Fish and Wildlife Service Office? A. That is right.

Q. Did you show him the two one-hundred-dollar bills? A. Yes.

Q. And did you tell him how you got the money? A. Yes.

Q. Did you tell him substantially what you have already testified to? [41] A. I did.

Q. And what did you do with the two one-hundred-dollar bills? A. Well, he said—

Mr. Stabler: We object to what Hillsinger said.

Q. Yes. Just tell what you did.

A. I gave them to Hillsinger and asked for a receipt. He said, "How would an affidavit do"? So, he gave me an affidavit.

(Testimony of William McKenzie.)

Q. And that was the money you examined a while ago and was shown to the jury?

A. Yes, that is right.

Q. How old are you, Mr. McKenzie?

A. I was born July 12, 1885.

Q. What is your approximate age at this time?

A. It will be sixty-four next July.

Mr. Baskin: You may cross-examine the witness.

Cross-Examination

By Mr. Stabler:

Q. Mr. McKenzie, is this the first time you have worked for the Bureau of Fisheries or the Fish and Wildlife, as you call it? A. Yes.

Q. This was the first season that you ever had a job with them? [42]

A. That is right.

Q. Had you been trying to get a job with them before?

A. I did try several years ago when the depression was on.

Q. So you tried again last year?

A. I put my application in for a position.

Q. And they gave you a job last year?

A. That is right.

Q. Did you have any commission of any kind from them?

A. Well, I was appointed Fishery Patrol Agent.

Q. Did you have any commission of any kind?

A. I don't know just what you mean by that.

Q. Did you have any written commission or anything of that kind?

(Testimony of William McKenzie.)

A. Yes; they gave me papers.

Q. Who gave them to you?

A. Miss O'Neill.

Q. Did she appoint you?

A. Well, she swore me in.

Q. Well, did she appoint you?

A. Dan Ralston hired me, and they sent me in to her office there to get signed up.

Q. What is Dan Ralston's position?

A. Why, I think he is head Enforcement Officer.

Q. What is his title?

A. Well, I think that is his title—Law Enforcement Officer for the Wildlife. [43]

Q. Law Enforcing Officer?

A. As far as I know.

Q. He is not the Director is he? A. No.

Mr. Bailey: We object, your Honor. I don't see what that has to do with it—his title or anything else.

The Court: Well, it is cross-examination.

Q. Now, you were designated as what—stream watchman, or what?

A. Fishery Patrol Agent.

Q. That was formerly called stream watchman?

A. That is right.

Q. And your job was to watch that stream?

A. That is right.

Q. No place else?

A. The rest of the bay around there where it was closed.

(Testimony of William McKenzie.)

Q. How much did you get for that?

A. Well, let's see——

Mr. Baskin: Your Honor, I don't think the salary he made in this employment is material.

The Court: It doesn't sound material to me.

Mr. Stabler: It may be very material. Besides it is cross-examination.

The Court: How could it be material?

Mr. Stabler: If the Court wants me to state in the presence of this jury, I will. [44]

The Court: You better state it.

Mr. Stabler: If he gets a salary, it might depend on what he got, or whether he would do what he says he did there.

The Court: Objection sustained.

Q. You worked from June 22nd to August 22nd; is that right? A. That is right.

Q. They put you out there—I think you said this place where you marked right here with the red "x"—clear up there at the head of the bay; is that right? A. That is right.

Q. What kind of a place was it? Describe it briefly.

A. There was an old cannery there at one time. There was nothing left but the foundation. I spread my tent on that foundation. It is right at the edge of the woods there.

Q. There is timber all around there?

A. That is right.

Q. And mountings? A. That is right.

(Testimony of William McKenzie.)

Q. You were all by yourself there?

A. Yes, that is right.

Q. In a tent? A. Yes.

Q. Were you fearful of any wild animals or anything of that kind? A. Yes. [45]

Q. You were quite fearful of bears and things of that kind?

The Court: How is that material?

Mr. Baskin: We object to that as not material to the case.

Q. But you were afraid, weren't you?

Mr. Baskin: We object to that.

The Court: Objection sustained.

Q. When is the first time you saw Mr. Nordgren?

A. August the 9th along about two o'clock in the afternoon, I think it was.

Q. After dinner, you said? A. Yes.

Q. Do you call the noonday meal dinner?

A. Yes.

Q. You heard some voices out there?

A. That is right.

Q. And you went out and saw a boat between the tent and the creek? A. Yes.

Q. And you said that was the "Lois W"?

A. That is right.

Q. Then you saw three men there—Mr. Nordgren and the two Harris brothers; did you know these men? A. No.

Q. Now, you say that Mr. Nordgren invited you aboard for [46] coffee?

(Testimony of William McKenzie.)

A. That is right.

Q. Did you go aboard? A. No.

Q. So you just thought they wanted some fish there; that is what you said?

A. That is what it looked like to me.

Q. But they didn't talk about fishing?

A. Yes, they talked about fishing, yes.

Q. They didn't make any effort to take any fish? A. No.

Q. And they pulled out of the area?

A. Within about fifteen minutes.

Q. And came back about five o'clock in the evening? A. Yes.

Q. That is August 9th you are talking about?

A. That is right.

Q. You said Mr. Nordgren came to your tent alone, by himself; that was about five o'clock in the evening? A. Correct.

Q. You said you didn't feel very easy; what did you mean by that?

A. They are three great big husky guys and they wanted them fish.

Q. Did they say so? [47]

A. He didn't use them words.

Q. That is what you thought? He didn't say he was going to take any fish?

A. He said, "There is no reason why you can't make four hundred and fifty or five hundred dollars for yourself here."

Q. What did you say to that?

(Testimony of William McKenzie.)

A. When I seen him coming up the hill that time, I was afraid and I was going to agree with any proposition he would make until I got away from there.

Q. And you were afraid of Mr. Nordgren and these two men? A. That is right.

Q. And you would agree to any proposition they might make because you were afraid?

A. It was better to let them have the fish than put a rock around my neck and sink me in the bay.

Q. They threatened to do that? A. No.

Q. That is what you were afraid of?

A. That is right.

Q. Now, you talked about your boat up there?

A. Yes.

Q. And you told him that you had no engine for the boat?

A. I don't remember all the conversation about it.

Q. He asked you to go aboard for dinner? [48]

A. Yes.

Q. And he said he had some pork chops and some beer? A. That is right.

Q. But you didn't go because you were afraid of them? A. That is right.

Q. You didn't see any of those men take any fish on August 9th, did you? A. No.

Q. As a matter of fact you didn't see them again at all until—when was it you saw them again?

A. It was the 12th of August, the next time I saw them.

(Testimony of William McKenzie.)

Q. The 12th of August was the next time you saw them. They came in on the 9th and invited you aboard the boat for dinner, and you were afraid of them, afraid they would put a rock around your neck and throw you overboard, and that is why you didn't go aboard?

A. That is more or less right.

Q. So they went out of there, and they didn't take any fish, and they didn't come back until the 12th, three days later?

A. That is right.

Q. And at that time you say Mr. Nordgren came in and gave you two one-hundred-dollar bills?

A. That is right.

Q. Now, you said here this morning on your direct examination that this money was for a one-sixth share of fish that they [49] had caught?

A. That is what they told me, that they were giving me some.

Q. For fish caught before the 12th?

A. They made a run into Petersburg and sold \$1200.00 worth of fish according to what he told me.

A. As far as you know they didn't catch any fish where you were?

A. I didn't see them fish that evening.

Q. These two one-hundred-dollar bills was for fish already caught and that was your one-sixth?

A. Yes.

Q. So you took the two one-hundred-dollar bills?

A. Yes.

Q. That was agreeable to you?

A. Yes.

(Testimony of William McKenzie.)

Q. Were you still afraid of them?

A. No. After they gave me the money I wasn't afraid of them any more.

Q. What changed your mind?

A. When I accepted the money, everything seemed to be quite friendly.

Q. Everything was all right when you took the money? A. Yes.

Q. That is the time you went out on the boat?

A. Yes. [50]

Q. And drank whiskey with them?

A. That is right.

Q. And beer with them?

A. That is right.

Q. And had dinner with them?

A. That is right.

Q. But you weren't afraid of them then?

A. That is right.

Q. When you got the money you got over your fright?

A. There is some truth in what you say.

Q. Did you see any other boats around there at that time?

A. No. What time do you mean?

Q. At that time or any time up to the 21st?

A. There were several boats in there.

Mr. Baskin: Your Honor, we object to any further questions along that line. It is not material.

The Court: What is the question?

(Testimony of William McKenzie.)

Mr. Stabler: If he saw any other boats in there. I want to see if he is sure about this boat, the "Lois W."

The Court: Objection sustained. You can question him about how sure he is about the "Lois W."

Q. I want to ask you directly whether or not you met anybody else in there?

Mr. Baskin: We object to that. Any examination about anybody else in there has nothing to do with this case. [51]

Mr. Stabler: I mean to ask directly if anybody else offered him money in there.

The Court: Objection sustained. If it were true, it certainly wouldn't be relevant to this case. Objection sustained.

Mr. Stabler: We take an exception to that. We would like to bring out the fact here that he did.

Mr. Baskin: We object to counsel reciting what he wants to bring out.

The Court: Yes, in the presence of the jury.

Mr. Stabler: I would like to make that statement in the absence of the jury.

The Court: From what you said, I ruled that the objection was sustained. If you want to make an offer further, you can make it in writing. I am not going to excuse the jury for that.

Mr. Stabler: I will make that in writing here before we get through.

The Court: Very well.

Mr. Stabler: We take an exception to the ruling too.

(Testimony of William McKenzie.)

Q. Now, on August the 12th Mr. Nordgren went back on the "Lois W" after he gave you this money? A. Yes.

Q. And it was later in the evening then that he called you to come aboard? [52]

A. That is right.

Q. And that is the time he gave you a drink of whiskey?

A. Three drinks of whiskey?

Q. Three drinks of whiskey?

A. Let me see—the 12th, a drink of whiskey and three bottles of beer.

Q. One drink of whiskey?

A. One drink of whiskey and two bottles of beer.

Q. And two bottles of beer; and you had lunch on the boat, didn't you? A. That is right.

Q. And is that the time they gave you the grub?

A. That is right.

Q. Did you ask them for grub?

A. No.

Q. Did you tell them you were out of grub?

A. No.

Q. So, you were on the boat at that time?

A. Yes.

Q. Everything was lovely?

A. Yes; everything was O.K.

Q. Now, you say that Nordgren and his crew made a set within fifty or sixty feet from you?

A. That is right.

(Testimony of William McKenzie.)

Q. And pulled out without any conversation at all? [53]

A. I don't think they knew I was on the beach there.

Q. That was the 12th?

A. No. That was Sunday morning, the 15th, they made the set.

Q. Did they make a set on the 12th?

A. I don't know. I didn't see them.

Q. You didn't see any set made on the 9th or on the 12th? A. No.

Q. Now, then they just gave you this money and pulled out; is that right? A. Yes.

Q. And you didn't see them again until August 15th? A. Yes, that is right.

Q. That was Sunday? A. Yes.

Q. And at that time it was about five o'clock in the morning? A. Yes.

Q. Were you up at that time?

A. I heard some noise on the beach and I got up.

Q. Did they come ashore? A. No.

Q. Did you talk to them? A. No.

Q. You saw somebody make a set out there?

A. Yes.

Q. Your eyesight is not very good, is it? [54]

A. Not too good.

Q. But you think it was the "Lois W"?

A. Yes.

Q. And that was Sunday, August the 15th?

A. That is right.

(Testimony of William McKenzie.)

Q. How long was that boat around there?

A. That morning of the 15th?

Q. Yes, sir.

A. It was there when I got up at five o'clock, and I don't think it was there much over an hour.

Q. And you didn't talk with them?

A. No.

Q. And they pulled out?

A. That is right.

Q. Do you know whether any fish was taken at that time? A. Yes.

Q. How many fish?

A. They got a brailer, and I don't know exactly how much it will hold. They had that filled eleven times. The last time it wasn't quite full.

Q. That was on Sunday?

A. Sunday, the 15th.

Q. That was a load, wasn't it? A. Sir?

Q. Was that a load? [55]

A. I don't know.

Q. So, they pulled out? Left? When was the next time you saw them?

A. Monday, the 16th.

Q. Did you talk with them? A. Yes.

Q. You said you got up and heard a boat out there but didn't see them; they started to make a set, and the web caught. When did you talk with them? A. In the evening.

Q. When was this set made?

A. They made the set in the morning; probably six o'clock they made that set.

(Testimony of William McKenzie.)

Q. And they just went out some place and came back in the evening, the same as before only they didn't come back in the evening the day before?

A. That is right.

Q. When they came back Monday evening, that was about five o'clock, wasn't it?

A. About that time.

Q. They invited you aboard, you say?

A. Yes.

Q. This is the time you went aboard the boat, the "Lois W," the second time, isn't it?

A. That is right. [56]

Q. You talked with Mr. Nordgren that time? .

A. That is right.

Q. The only two times you talked with Mr. Nordgren was on the 9th and on the 16th; is that right?

A. That is right.

Q. This is the time you——

A. The 12th, I talked to him the 12th too.

Q. Excuse me. That is right. That is the time he gave you \$200.00 for fish to be caught in the future or that had been caught, and you say one-sixth was your share. So, you talked with him on the 9th and the 12th, and you didn't talk with him again until the 16th, Monday?

A. That is right.

Q. Now, on the 16th about five o'clock in the evening, that is when you went aboard the second time?

A. That is right.

Q. That is the time you had three drinks of whiskey?

A. That is right.

(Testimony of William McKenzie.)

Q. That is the time you asked them for a salmon too, didn't you? A. That is right.

Q. You asked them? They didn't ask you to take one? A. That is right.

Q. Is that one of the salmon that was caught there?

A. I don't know where they caught it. [57]

Q. Was this salmon taken out of the ice?

A. Yes. They had ice aboard, and the salmon was cold.

Q. The salmon they gave you they went down and took out of the ice?

A. They went down and got it below deck.

Q. That is all that happened; they went away after that, didn't they? A. Yes.

Q. And the next thing is when the "Scoter" came on the 21st? A. Yes.

Q. And you went over and reported. You got the money on the 12th and reported it on the 21st?

A. No; it was the 22nd, I am pretty sure. I have a diary. It was the 22nd.

Q. That is the time you told the captain, Harndin, that the "Lois" crew had bribed you?

A. No; that was the 21st.

Q. Oh; the 21st. So you didn't do anything about this from the 12th to the 21st? A. No.

Q. In the meantime you had got your motor for your power boat, hadn't you?

A. I think I got that before that.

Q. So that you were loading up your own boat to pull out of there when the "Scoter" came in?

(Testimony of William McKenzie.)

A. No. I was tearing my tent down and getting my stuff ready to go aboard the "Scoter."

Q. Now, on the 9th of August you say that this proposition was for you to share one-sixth?

A. No. There was nothing said about what I would share. They told me they would give me a share.

Q. And you were afraid if you didn't agree to the proposition that they would tie a rock around your neck and throw you overboard?

A. That is right.

Q. Did you agree to the proposition?

A. Yes.

Q. So that on the 9th you did agree to the proposition, you say?

Mr. Bailey: Your Honor, we object to this. He has been into this twice, three times.

The Court: It is repetitious.

Mr. Stabler: There is one thing I overlooked there.

The Court: You may ask it.

Q. Did you say you didn't want to go aboard the boat on the 9th because it was raining too much?

A. That is what I told Mr. Nordgren.

Q. You told him you would think about it later?

A. Yes.

Q. And you had made up your mind to go through with the proposition, [59] is that right?

A. Yes.

Q. I think you said you had defective vision?

(Testimony of William McKenzie.)

A. Yes, that is right.

Q. This salmon that they gave you, did you take it ashore? A. Yes, sir.

Q. Did you eat it? A. Yes, sir.

Q. When you drank the three drinks of whiskey and the beer, did you get intoxicated?

A. Well, I don't think so.

Mr. Stabler: I would like to renew my motion on that, if the Court please, and I would like to reduce to writing what I would like to bring out. It will be just a second.

The Court: Very well; or you may approach the bench. Counsel may approach the bench.

Mr. Stabler: Yes. I just want to ask a question or two first.

Q. Now, a charge was made against these three men at Sitka——

Mr. Baskin: Your Honor, I am going to object to him asking anything that was done at Sitka. That is not material.

The Court: That is the way it seems to me, unless this is preliminary to something that is material.

Mr. Stabler: I think it is material because the Court will have to instruct the jury that this case is not to find the men guilty of illegal fishing or consider that, only so [60] far as it pertains to this particular case.

The Court: The Court usually instructs the jury not to consider any previous convictions or any-

(Testimony of William McKenzie.)

thing else that comes out in the evidence—you don't mean to tell me you want to bring it out in evidence for the purpose of asking for an instruction on that?

Mr. Stabler: I want to bring it out to show what happened.

The Court: I don't believe it has anything to do with the case.

Mr. Stabler: I would like to renew my motion.

The Court: You may approach the bench.

Whereupon, Mr. Baskin, Mr. Stabler and the court reporter approach the bench, out of hearing of the jury, and the following took place:

Mr. Stabler: I would like to bring out from this witness his testimony on the trial of the fisheries case at Sitka, that the "Vivian June" came in there on the 13th of August and the boat "Nightingale" and also the "Paddy," the three boats—"Vivian June" and "Nightingale" and "Paddy"—and some of the men offered him money and were friends of him, for the purpose of showing he was mistaken as to who gave him the money.

The Court: Objection is sustained as to that.

Whereupon, Mr. Baskin, Mr. Stabler and the court [61] reporter withdrew from the bench and were again within hearing of the jury, and the trial proceeded as follows:

(Testimony of William McKenzie.)

Redirect Examination

By Mr. Baskin:

Q. Mr. McKenzie, you stated you took the money from Kurt Nordgren, the two one-hundred-dollar bills; tell the jury why you accepted that money.

A. I was afraid if I didn't agree to what they wanted—they wanted the fish—I didn't think them fellows would stop for anything. I accepted the proposition. I thought probably they would sink me in the bay. I took the money and tried to get along until I could get away from there.

Q. You testified on cross-examination that your vision is somewhat defective? A. Yes.

Q. Is that vision corrected, while wearing glasses, to a certain extent? A. Not quite.

Q. But regarding August 15th, you stated that you saw Nordgren fishing, I believe on August 15th, did you not? A. Yes.

Q. That was early in the morning?

A. Yes.

Q. Did you recognize Nordgren as being one of the fishermen [62] there on that occasion?

A. That is right.

Q. And the two Harris brothers?

A. That is right.

Q. Now, you testified that you received the \$200.00 on August 12, 1948, and you reported it first on August the 21st; is that correct?

A. That is correct.

Q. Now, tell the jury if that was the first oppor-

(Testimony of William McKenzie.)

tunity you had to report that to any Fish and Wildlife Service Agent? A. Yes.

Q. Or any other law enforcement officer?

A. There was no other law enforcement officer around there. That was the only law enforcement officer that come out there was on that boat. That was the first chance I had, and I wasn't long on that boat before I reported it to him.

Q. And I believe you testified that you agreed to their proposition; the proposition that Nordgren offered you, that was. What did you say to him when you agreed to accept that money?

A. I just said, "O.K."

Q. Is that all you said? A. Yes.

Q. And you agreed to his proposition because that you were afraid you might be harmed if you didn't; is that correct? [63]

A. That is correct.

Mr. Baskin: That is all, I believe.

Mr. Stabler: That is all.

(Witness excused.)

MILTON FRANK HARNDIN

called as a witness on behalf of the Government, being first duly sworn, testified as follows on:

Direct Examination

By Mr. Baskin:

Q. What is your full name?

(Testimony of Milton Frank Harndin.)

A. Milton Frank Harndin.

Q. Where do you reside?

A. I reside at Sitka.

Q. Who are you employed by?

A. Fish and Wildlife Service.

Q. What is your position with the Fish and Wildlife Service? A. I am ship's master.

Q. Are you the captain of a boat?

A. Yes, I am.

Q. What boat is it that you are captain of?

A. The Fish and Wildlife Service "Scoter."

Q. That is a Fish and Wildlife Service boat, is it? A. Yes, sir.

Q. Are you acquainted with William McKenzie?

A. Yes, I am slightly acquainted with him. [64]

Q. Did you know him on or about August 21, 1948?

A. Yes. I remember picking him up on that day.

Q. Were you the skipper or captain of the "Scoter" on that day? A. Yes, sir.

Q. Where did you see William McKenzie on that day?

A. I picked him up at Red Fish Bay.

Q. Is that on Baranof Island?

A. The southwestern coast of Baranof Island.

Q. Did he come aboard the boat?

A. We picked up his camping equipment and brought him back to Sitka.

Q. And what time did he get aboard the

(Testimony of Milton Frank Harndin.)

“Scoter”? Would you recall the approximate time?

A. I got into the harbor about 4:55, and we had all his equipment and McKenzie on board and we pulled out at 5:50.

Q. Did you engage in a conversation with him after he got aboard the boat?

A. I engaged in a slight conversation with him, but to no great extent.

Q. Now, did he show you any money when he came aboard the boat?

A. Yes. He showed me two one-hundred-dollar bills.

Q. Did he tell you where he got them?

Mr. Stabler: We object to what he told him. It is [65] not proper direct examination.

The Court: You can answer the question yes or no.

A. What is the question?

Q. Did he tell you where he got the money, the two one-hundred-dollar bills? A. Yes.

Q. Did you take the money from him, the two one-hundred-dollar bills?

A. I did not; no.

Q. But you saw them?

A. I saw them.

Q. Did you tell him what to do with the money?

A. Yes.

Mr. Stabler: We object to that as not proper direct examination, and it has no bearing on this case.

(Testimony of Milton Frank Harndin.)

The Court: Objection overruled.

Q. What did you tell Mr. McKenzie to do with the money? A. Well, I——

The Court: You don't have to repeat your exact words. Say what you told him to do.

A. I told him to turn the money over to the warden, Gomer Hillsinger, when I put him ashore at Sitka. That is where Mr. Hillsinger is.

Q. Mr. Hillsinger is Patrol Agent or an officer of the Fish and Wildlife Service? [66]

A. Yes.

Mr. Baskin: I believe that is all. You may cross-examine.

Mr. Stabler: No cross-examination.

The Court: Why did you pick him upon that day?

A. Pardon me?

The Court: Why did you pick him up on that day, on August 21st?

A. We were picking him up from that watching job down there.

The Court: I know you were bringing him back, but did the season end?

A. His job as watchman down there ended at that time.

(Witness excused.)

GOMER S. HILLSINGER

called as a witness on behalf of the Government,
being first duly sworn, testified as follows on:

Direct Examination

By Mr. Baskin:

Q. What is your full name, Mr. Hillsinger?

A. Gomer S. Hillsinger.

Q. Who are you employed by?

A. Fish and Wildlife Service.

Q. Is that of the Department of the Interior,
United States Government? A. Yes, it is.

Q. Where are you stationed; what is your station?
A. Sitka, Alaska.

Q. Where were you stationed on or about
August 22, 1948?

A. I was in Sitka, Alaska.

Q. Are you acquainted with William McKenzie?

A. Yes, I am.

Q. Did you know him on August 22, 1948?

A. Yes, I did.

Q. Did you—was he an employee of the Fish
and Wildlife Service at that time?

A. Yes, he was.

Q. Where were you when you saw him on August 22, 1948?

A. I first saw him on the street in Sitka.

Q. Did he have a conversation with you or did
you have a conversation with him?

A. Yes, I did.

Q. What did you do after you saw him on the
street?

(Testimony of Gomer S. Hillsinger.)

A. We went up to my office in Sitka.

Q. Is that the Fish and Wildlife Service Office? A. Yes.

Q. In Sitka, Alaska? A. Yes.

Q. Did you again talk with him or engage in conversation with him? A. Yes, I did. [68]

Q. Did he show you any money at that time?

A. Yes, he did.

Q. What did he show you?

A. Two one-hundred-dollar bills.

Q. Did he tell you where he got them?

Mr. Stabler: We object to that, if the Court please, as not proper testimony.

The Court: He can answer yes or no.

Q. Did he tell you where he got the two one-hundred-dollar bills? A. Yes, he did.

Q. I show you—this is Plaintiff's Exhibit No. 1, two one-hundred-dollar bills; one is known as Federal Reserve Note No. L 06995997 A, and the other is Federal Reserve Note No. L 07021621 A; and I ask you if those are the bills that he gave you?

A. I would say they were; yes.

Q. Did he give you two bills? Were they one-hundred-dollar notes that he gave you?

A. Yes, they were.

Q. And these are the same bills or similar bills that he gave you; is that correct?

A. They are similar bills; yes.

Mr. Baskin: That is all. You may examine the witness. [69]

(Testimony of Gomer S. Hillsinger.)

Cross-Examination

By Mr. Stabler:

Q. What did you do then after this was reported to you?

Mr. Baskin: Your Honor, I object as to what he did after the matter was reported to him. That is not material in this case.

The Court: I think there is nothing immaterial in this particular question. Objection is overruled.

Q. What did you do after this was reported to you?

A. I took the two bills. They were turned over to me, and then I next day, I believe it was, or the following day that I went down to the Commissioner's and filed a complaint.

Mr. Baskin: Your Honor, I don't see this that he is going into has anything to do with the case.

The Court: He has answered the question. There is nothing further before the Court.

Q. What complaint did you file?

Mr. Bailey: We object.

Mr. Baskin: We object to any further questions along that line.

The Court: Objection is sustained. It is immaterial.

Mr. Stabler: We take an exception. That is all.

Mr. Baskin: The Government rests, your Honor. That is all.

(Witness excused.) [70]

Whereupon, Court recessed for ten minutes, re-

convening as per recess with all parties present as heretofore and the jury all present in the box; whereupon, the trial proceeded as follows:

Mr. Stabler: At this time we would like to make a motion, if the Court please, and I suppose in the absence of the jury.

The Court: The jury may retire to the jury room until called.

(Whereupon, the jury retired from the courtroom.)

Mr. Stabler: At this time, if the Court please, the defendant moves now for—makes this motion for acquittal on the ground and for the reason that the prosecution has failed to show that Mr. McKenzie was a person acting on behalf of the United States in any official function. Now, the testimony here alleges that Mr. McKenzie was—the last statement that was made by Mr. Hillsinger that he was an employee of the Fish and Wildlife Service at that time; and now, I think that was the statement also of Mr. McKenzie who said that he performed the duties that had been performed theretofore by a stream watchman and that he was now designated, I think, as Agent of the Fish and Wildlife.

Now, this indictment here, apparently drawn in accordance with the provisions of Section 91 of Title 18, alleges that—I refer now only to the description of the official [71] capacity of Mr. McKenzie—“said William McKenzie being a person acting for and on behalf of the United States in an official function, under and by authority of the Fish

and Wildlife Service, United States Department of the Interior, whose duties were to observe the area of Red Fish Bay, Baranof Island, Alaska," and then it goes on and says some other matters about that area being closed to fishing, "to report and disclose to officials of said Fish and Wildlife Service, and other law enforcement officials, and to arrest and cause the arrest and prosecution of, all persons fishing illegally for salmon in said closed area; knowing said William McKenzie was a person acting for and on behalf of the United States in an official function with duties as aforesaid." Now, those words describe the official capacity of the only witness here as to his official duties there.

Now, under this statute here it provides for the prosecution and punishment of anyone who "shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States"—that is the first—"or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to [72] any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses," etc.

Now, I contend here that Mr. McKenzie is not such an officer or has no official functions to perform as an officer—he had none.

Now, it so happens that Congress on June 25, 1948, repealed that Section 91, and the new act is found in 18 USCA, Section 201, and in this Section 201 the amending statute attempts to cure that very thing because it is broader in its language as to who may be bribed. I don't know whether the Court has looked at this statute or not.

The Court: Well, I have looked at it, but I don't recall any language or any difference of that kind.

Mr. Stabler: Yes, there is quite a difference, because it says first: "to any officer or employee or person acting for or on behalf of the United States, or any department or agency thereof, in any official function, under or by authority of any such department or agency or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision."

The Court: You mean it added the word "person"?

Mr. Stabler: "Employee or person." The testimony of Mr. Hillsinger was that Mr. McKenzie was an employee. His own [73] testimony was that he was appointed by Dan Ralston, I think, who was Chief Enforcement Agent or Officer, and that he got some swearing-in before Miss O'Neill down here in the Bureau of Fisheries.

Now, the Committee of Congress that made those changes shows here in 18 U. S. Code under that section as to why these changes were made, and the very reason was that it did not include this old

section. Incidentally, this old section was in effect until September 1, 1948. In other words, had this alleged crime been committed just twenty days later, so to speak, it would not have come under this old section; it would have come under the new section effective September 1, 1948. The date of the alleged offense is August 12, 1948, just a few days before the new act was in effect. Now, in these notes here, the Reviser's Notes it is called, found at Page 2459 of this new Code of the Criminal Laws of the United States, Title 18, the "Section was expanded to embrace all officers or persons acting on behalf of any independent agencies or Government-owned or controlled corporations by inserting words 'or any department or agency thereof,' and by substituting words 'such department or agency' for 'department or office of the Government thereof.'

"The Supreme Court of the United States in construing section 93 of title 18, U.S.C., 1940 ed., section 434 of this title, in *United States v. Strang*, held that persons employed [74] by a Government-owned or controlled corporation, such as the old United States Shipping Board Emergency Fleet Corporation, were not within its reach or scope, because, strictly speaking, a Government-owned or controlled corporation is not an integral part of the United States Government but is to be regarded 'as a separate entity.' However, the Court implied strongly that said section 93 could be applicable to persons employed by such corporations if Congress so intended.

“When Congress enacted this section as a part of the 1909 Criminal Code, the present ramifications of the executive branch were not foreseen, and, consequently, the language proved inadequate to cover every new agency as indicated by the holding in the Strang case. Since then the growth of agencies, independent establishments, and Government-owned or controlled corporations has been phenomenal. It is the purpose of the inserted language to further what appeared unquestionably to be the intent of Congress, namely, to cover all persons acting for the United States Government in an official function.”

Then they made other changes there, and principally to cover sections which had not been covered, and other things of that kind. Now, that grew about in a case where—I think the Strang case—where it appeared that during the time the Government had the railroads in operation during the War——

The Court: Now, there is no comparison here between the railroads and corporations and the Department of the [75] Interior.

Mr. Stabler: I am saying that this is not an official function.

The Court: Have you any case on that?

Mr. Stabler: I started to say the Strang case held—during that time someone gave money to a porter to release some baggage——

The Court: You have to have another than that.

Mr. Stabler: That the porter was not holding an official function.

The Court: That was railroads under the control of the Government. That is altogether different.

Mr. Stabler: It goes on to hold that the question under the old statute, now repealed, is just how far that official function goes. In other words, is everyone under the employ of the Bureau of Fisheries performing an official function so to be subject to bribery. I say in this case Mr. McKenzie is not such an officer. If there is an official function to be performed, there is of necessity an official capacity. Now, we have here Section 227 of Title 48. It is found in the pocket parts here, and it says, "For the purposes of Sections 221-228, and 232-234"; this is, "Employees of Fish and Wildlife Service as peace officers. For the purposes of sections 221-228, and 232-234, of this title all employees of the Fish and Wildlife Service, designated by the Director, shall be [76] considered as peace officers and shall have the same powers of arrest of persons and seizure of property for any violation of the provisions of said sections as have United States marshals or their deputies."

Now, I asked this witness, Mr. McKenzie, if he was designated by the Director of the Bureau of Fisheries as an officer of the Bureau of Fisheries, because definitely under that statute he does not have such powers as——

The Court: Does he have to have?

Mr. Stabler: Yes, he does.

The Court: I want to see some authority for that

then. I don't think it is only peace officers that come under that.

Mr. Stabler: It designates his power. I say he would not have the power of arrest.

The Court: I don't see why he would have to have.

Mr. Stabler: I think he was not performing any official function out there. I think he was just an employee.

The Court: I get your point, but I refer to the fact you don't seem to have any authorities in support of it.

Mr. Stabler: There are plenty authorities as to when one is an employee and when one is performing an official function.

The Court: I mean under this precise statute and this precise point. [77]

Mr. Stabler: Only the porter case—he was not performing an official function; he was merely an employee.

The Court: It is not at all the same relationship.

Mr. Stabler: Well, I make my point here that Mr. McKenzie testified that he was not appointed or designated by the Director of the Bureau—the Fish and Wildlife Service—as a peace officer. He was out there merely as an employee and had no official capacity and was not performing any official function under this statute. He might be under the statute as amended, but not under that statute, and for that reason we ask that the Court direct an order of acquittal.

The Court: The motion is denied. Call the jury.

Mr. Stabler: We take an exception.

(Whereupon, the jury returned and all took their places in the jury box.)

Defendant's Case

HUGH HARRIS

called as a witness on behalf of the defendant, being first duly sworn, testified as follows on

Direct Examination

By Mr. Stabler:

Q. What is your name? A. Hugh Harris.

Q. Where do you live, Mr. Harris?

A. Petersburg. [78]

Q. How long have you lived down there?

A. Oh, some twenty-four years.

Q. Do you know Kurt Nordgren?

A. Yes, sir.

Q. What is your occupation?

A. Fisherman.

Q. Were you on the boat last year—"Lois W"?

A. I was.

Q. Who owns that boat?

A. Mr. Nordgren.

Q. You mean Kurt Nordgren, sitting here?

A. Kurt Nordgren.

Q. Who was on the boat with you and Kurt Nordgren? A. My brother Richard.

Q. Now, calling your attention to the month of August, 1948, did you fish with those two men during that month on the "Lois W"? A. Yes.

(Testimony of Hugh Harris.)

Q. Do you remember when you started out from Petersburg, the date?

A. I don't remember the exact date we left there; no.

Q. Well, I will call your attention to the opening date—I think it was August 9th?

A. That is right.

Q. Where did you start out from? [79]

A. We started out from Petersburg.

Q. Where did you go?

A. We went up to Red Fish Bay.

Q. Did you see William McKenzie up there?

A. Yes.

Q. What did you do up there that day?

A. Oh, we just monkeyed around up there.

Mr. Baskin: Your Honor, I think the witness should be asked what day. I think it is too general.

The Court: I thought he was referring to a certain day. A. August 9th.

Mr. Stabler: August 9th, the opening day.

The Court: Continue.

Q. What did you do up there in Red Fish Bay?

A. We got our seine straightened out there and, if I recall, we made two sets outside the line there.

Q. What do you mean "outside the line"?

A. Legal water, legal territory.

Q. Now, here is a map of Baranof Island. This is map—Chart No. 28253. I will ask you to step over here and show where you mean that you took them in the legal water.

(Testimony of Hugh Harris.)

A. This water here is closed; outside here is open.

Q. Do you see a red line there on that chart? Are the waters north of that line closed—were they at that time? [80]

A. This is north?

Q. Yes.

A. All this water in here is closed.

Q. How about south of that line?

A. No; that is open.

Q. Now, take your chair. Did you do any fishing in that closed area that day?

A. No, we didn't.

Q. Or any other day?

A. Not last year.

Q. Did you see William McKenzie there?

A. Yes, I seen William McKenzie there.

Q. Did any conversation happen or anything of that kind? A. Well, not with me.

Q. Did he come on your boat?

A. On the 9th?

Q. Yes. A. No, I don't believe he did.

Q. What did you do on the next day, the 10th?

A. Next day we was on our way to town.

Q. What town? A. Petersburg.

Q. Did you have any fish?

A. We had some, yes.

Q. Where did you catch those? [81]

A. We caught some of those fish at Red Fish Bay.

(Testimony of Hugh Harris.)

Q. North or south of the line?

A. Legal water, south of the line.

Q. How long were you in Petersburg on that trip before you came back?

A. Let's see. We got in there late in the evening.

Q. You are talking about the 10th?

A. Yes; the evening of the 10th; and sold our fish that night.

Q. Who did you sell them to?

A. Kaylor & Dahl Fish Company.

Q. How many fish did you have?

A. I don't recall exactly; around 1200, I think, something like that.

Q. What kind of fish?

A. I think they were all reds. I am not certain whether there were any humpies in there or not.

Q. Do you remember how much you got for those fish? A. Not the exact dollar; no.

Q. Can you give us an idea?

A. 1200; it must have been something over \$1600.00.

Q. Now, were any of those fish caught in that closed area of Red Fish Bay? A. No.

Q. Did you or any member of your crew to your knowledge have any agreement with William McKenzie about fish? [82]

A. Not to my knowledge; no.

Q. You sold those fish in Petersburg, you say?

A. Yes, that is right.

(Testimony of Hugh Harris.)

Q. When next were you in the vicinity of Red Fish Bay?

A. Oh, let's see. I think we got back there on the 13th.

Q. Where were you on the 12th?

A. Let's see. We were en route from Petersburg to Red Fish. We stopped in Red Bluff Bay and was there early in the morning. From there we went to Pillar Bay.

Q. I am going to ask you if you were in Red Fish Bay—I am not talking about Red Bluff Bay, but Red Fish Bay—on the 12th of August?

A. No. We couldn't very well have been there on the 12th of August.

Q. Where did you go from Red Bluff Bay?

A. To Pillar Bay.

Q. Did anything happen there?

A. Nothing out of the ordinary. We saw a Bureau plane. They talked to us.

Q. Fish and Wildlife? A. Yes.

Q. That was in Pillar Bay? A. Yes.

Q. That was the 13th?

A. I am quite sure it was the 13th. [83]

Q. Now, where did you go from Pillar Bay?

Mr. Baskin: Your Honor, I don't see where activities in other bays is material in this case, and I object to any further examination along this line.

The Court: If the purpose is to show they were not in Red Fish Bay on the date testified by your witness, why, it would be material.

(Testimony of Hugh Harris.)

Mr. Stabler: That is what I am showing, if the Court please.

Q. On that date you were in Red Bluff Bay, and next day you went to Pillar Bay; is that correct?

A. Yes, sir. We were in Red Bluff Bay the early morning of the 13th. From there we went to Pillar Bay.

Q. All right. And at Pillar Bay you saw the Fish and Wildlife plane? A. Yes.

Q. That was the 13th. Where did you go from Pillar Bay? A. To Red Fish Bay.

Q. What time did you get to Red Fish Bay?

A. Sometime that afternoon, the 13th. I don't remember exactly what time it was.

Q. Where did you stay that night?

A. Let's see.

Q. The night of the 13th?

A. We anchored at ten fathom anchorage that night. [84]

Q. Where is ten fathom anchorage?

A. That is at the mouth of Red Fish.

Q. I will ask you to step over here and show the jury where it is.

A. It is marked on the chart ten fathom anchorage. Excuse me; that is the wrong spot. Here.

Q. That is in Red Fish Bay?

A. Yes. This is all Red Fish Bay in here, the whole thing.

Q. But it is south of this red line?

A. Yes.

(Testimony of Hugh Harris.)

Q. And that is where you anchored that night; is that right? A. Yes.

Q. Had you done any fishing before you got there? A. On that trip?

Q. Yes.

A. No, we hadn't done any fishing on that trip.

Q. Did you go anywhere north of this red line?

A. On that day?

Q. Yes.

A. We were inside the Bay that day.

Q. What were you up there for?

A. Looking around, seeing if there were any fish.

Q. Why did you go up there looking for fish?

A. We were not necessarily looking for fish. If there are fish in the Bay, usually there are some on the narrows on [85] the outgoing tide.

Q. Did you see William McKenzie that day?

A. Yes.

Q. What, if anything, happened?

A. There wasn't much of anything happened. He was aboard the boat.

Q. What did he do on the boat?

A. Talking. I believe he ate with us that day.

Q. That is the 13th now that you are talking about? A. Yes.

Q. Did he have anything to drink on your boat?

A. We had a——

Q. I mean did Mr. McKenzie have anything to drink on your boat?

(Testimony of Hugh Harris.)

A. He had some beer, and I think one drink of whiskey, maybe two.

Q. How did you get along with Mr. McKenzie? Did he show signs of being fearful of any of you men? A. No; not fearful.

Q. How did he act?

A. He acted friendly like anybody else, glad to see a fisherman or anybody else come into the Bay to talk to.

Q. He came on your boat? A. Yes.

Q. Drank your whiskey? [86] A. Yes.

Q. Beer? A. Yes.

Q. Did he have anything to eat?

A. My duties are cook on the boat. I asked him to have dinner with us.

Q. Did he have dinner with you? A. Yes.

Q. Was anything said about how he was fixed for grub at that time?

A. We asked him if he was short of anything and what he had had to eat. We——

Mr. Baskin: We object, your Honor. What he is saying is hearsay.

Mr. Stabler: I don't think what Mr. McKenzie said was hearsay, if the Court please.

The Court: It is an immaterial matter. In a sense, there hardly need be an objection to it. It has already been testified to. But in addition to that it seems to me that it is immaterial. He admits he got grub there, so what is the use of going into it?

(Testimony of Hugh Harris.)

Mr. Stabler: He said he was afraid these men would put a rock around his neck and throw him overboard.

The Court: But he said he was afraid only until after he accepted their proposition. [87]

Mr. Stabler: Oh, I see.

Q. Now, did you make any sets up here north of this line?

A. No. We didn't fish inside the Bay.

Q. Did you make any set there on the 9th of August? A. Inside the Bay?

Q. North of this red line? A. No.

Q. The 12th of August?

A. No. We didn't fish in there.

Q. Or the 15th or 16th? A. No.

Q. When were you in that place next; do you recall?

A. Well, we left there and went up the shore. We fished all day Saturday.

Q. That is the 14th? A. Yes.

Q. Where did you fish on the 14th?

A. Whale Bay.

Q. Where is that?

A. That is a little further on up. The chart doesn't show it.

Q. In here?

A. That is a large scale chart; I think, way on up past what the chart shows.

Q. I don't know whether you said when you were next into Red Fish Bay and saw Mr. McKenzie? [88]

(Testimony of Hugh Harris.)

A. I think we came back in there Sunday.

Q. That was closed on Sunday?

A. Oh, yes. It is closed all over on Sunday.

Q. What did you go in there for?

A. To anchor.

Q. And where did you anchor?

A. I don't know whether we anchored up in the bay that night or out in the ten fathom.

Q. Did you see Mr. McKenzie that day?

A. Yes; we seen him that day.

Q. What happened?

A. Oh, he was out aboard the boat again, and we gave him a fish to eat.

Q. And anything else?

A. Nothing else except he had a couple drinks of whiskey and went back ashore.

Q. Did he have any beer?

A. He had beer too.

Q. Did you give him any groceries or did he have dinner with you?

A. He only had dinner aboard the boat once, one time.

Q. Was that the time you gave him provisions?

A. When he had dinner.

Q. The 15th, or the other time?

A. I think the day he ate with us was the time we gave him [89] some things to take ashore with him.

Q. You were a member of that crew and entitled to a share of the receipts?

(Testimony of Hugh Harris.)

A. Yes; that is right.

Q. Was any agreement made to your knowledge with Mr. McKenzie to have a share of your fish?

A. No.

Q. Was any deductions made from the sale of fish for any share for Mr. McKenzie?

A. No.

Q. Do you know anything about two one-hundred-dollar bills being paid to Mr. McKenzie for a share of fish caught by you or your crew on the "Lois W"?

A. No. I don't know anything about it.

Q. Did you ever have any trouble with Mr. McKenzie of any kind?

A. No. I never had no trouble with him.

Q. Were you friendly?

A. I always was friendly to him.

Mr. Stabler: You may cross-examine.

Cross-Examination

By Mr. Baskin:

Q. Are you Richard or Hugh Harris?

A. I am Hugh. [90]

Q. You have a brother by the name of Richard; is that right?

A. That is right.

Q. And he was also one of the members of that crew of the "Lois W"?

A. Yes.

Q. Hugh, tell me, are you related to Mr. Nordgren here, the defendant?

A. Yes.

Q. What is your relation to him?

A. Brother-in-law.

(Testimony of Hugh Harris.)

Q. You are married to his sister?

A. We are married to sisters.

Q. Both of you married sisters?

A. Yes.

Q. I believe you testified that you were in Red Fish Bay on August the 9th; is that right?

A. Yes, sir; that is right.

Q. What time did the season open?

A. The season opened at six o'clock in the morning, August 9th.

Q. And you were already at Red Fish Bay at the time?

A. We left town on Sunday and got there on the 9th.

Q. Were you up inside the area, closed to fishing, on the 9th? A. Yes.

Q. And saw Mr. McKenzie up there?

A. I saw him on the beach. [91]

Q. But you didn't personally talk with him at the time? A. No.

Q. You only talked with him while he was on the boat?

A. I only talked with him while he was on the boat; that is right.

Q. Now, were you up there on August 12, 1948?

A. No; we wasn't in there August the 12th.

Q. Where were you on August 12th?

A. We was on our way out from town.

Q. From Petersburg? A. Yes.

Q. You didn't arrive at Red Fish Bay on that date? A. No.

(Testimony of Hugh Harris.)

Q. Are you certain of that?

A. Quite certain.

Q. How do you know you weren't there on the 12th?

A. It is a 16-18 hour run out there, and we stopped at two different bays on the way. That would take quite a while longer. We couldn't very well have made it by the afternoon.

Q. You couldn't be mistaken about not being in the Bay that day?

A. No.

Q. But you could have been up there?

A. In Red Fish? [92]

Q. It is possible you could have been in Red Fish Bay on August 12th?

A. We were in Petersburg.

Q. It is impossible for you to be mistaken, and you couldn't have been in Red Fish Bay on August 12th? Is that what you want the jury to believe? It is impossible; you couldn't have been there?

A. I am saying we left town.

Q. I am asking the question—is it possible you were in Red Fish Bay on August 12th?

A. I don't see how it is possible.

Q. Is it impossible for you to have been in Red Fish Bay on August 12th?

A. As long as we were on the boat——

Q. You couldn't possibly have been in Red Fish Bay on August 12th? That is what you want them to think?

A. I don't see how we could be.

(Testimony of Hugh Harris.)

Q. As a matter of fact, you were there.

A. I wasn't there.

Q. And it wasn't possible for you to have been there?

A. I don't see how it could be.

Q. That is what you want the jury to believe; is that right?

A. Yes.

Q. When did you see Mr. McKenzie next?

A. I seen him the afternoon or evening of the 13th. [93]

Q. First—on August 9th what time did you get into Red Fish Bay?

A. We got there that morning.

Q. Early in the morning?

A. No; not early.

Q. What time?

A. I don't remember exactly; sometime around—I would say in the middle of the forenoon.

Q. Before noon. How long were you there?

A. Till that evening.

Q. What time in the evening?

A. Oh, let's see. I think we left there about—let me think—no; it was around—let's see. We fished outside there. I think we left there sometime between ten o'clock that evening and midnight.

Q. You arrived before noon, you said, and that was up inside the closed area of Red Fish Bay?

A. Yes.

Q. And you stayed up there until about ten or eleven o'clock that night?

(Testimony of Hugh Harris.)

A. No. I didn't say that.

Q. What did you say?

A. I said we left the Bay.

Q. What time did you leave the Bay?

A. The Bay includes all that water. We fished outside. [94]

Q. You went up in the closed area in the forenoon? A. Yes.

Q. How long did you stay up there in the closed area north of the red line?

A. Not very long.

Q. How long would you say?

A. A matter of maybe a half an hour.

Q. What did you do then? You left about ten or eleven o'clock and went to the outside?

A. Eleven o'clock when?

Q. A.M. on August 9th.

A. Yes. We fished out there all day.

Q. Your testimony is you spent about thirty minutes inside the closed waters; is that right?

A. That is right as near as I can remember.

Q. What did you go up in that part of the Bay for? A. To look around.

Q. What for? A. Fish.

Q. What kind of fish?

A. The only kind of fish that run there are red salmon.

Q. You knew that area was closed, didn't you?

A. Yes.

Q. What did you go up and see if there were any fish up there for? [95]

(Testimony of Hugh Harris.)

A. I explained to Mr. Stabler, if fish are inside the Bay, usually fish come through the narrows on the outgoing tide.

Q. What is the approximate distance separating the closed area from the open Bay—from the stream that runs into the mouth of Red Fish Bay; what is that approximate distance?

A. You mean——

Q. What is the distance from the line which crosses the second narrows, which separates the closed area from the open area, and the head of the Bay up there where you went in and anchored, August 9, 1948?

A. About a mile and a quarter to the head of the Bay.

Q. And you went all the way up in this closed area to see if any salmon were up there?

A. We went all over up there.

Q. And all over this area you were looking for salmon?

A. Yes.

Q. When they start upstream do they usually hang around the mouth of the stream?

A. Red salmon, when they start, usually go right up.

Q. Were there a lot of fish in there?

A. I wouldn't say a lot, but there was fish there.

Q. And you saw them?

A. I saw them jumping; yes.

Q. And that is the time you saw Mr. McKenzie on the beach?

(Testimony of Hugh Harris.)

A. I saw Mr. McKenzie on the beach that day.

Q. You don't deny that?

A. No; I don't deny that.

Q. When did you next see him?

A. Let's see. The next time I seen him was when he come aboard the boat and had dinner with us.

Q. Were you inside the closed area?

A. Yes; anchored.

Q. What day was that? A. The 13th.

Q. How do you know?

A. By the calendar.

Q. Did you pull a calendar out and look at it?

A. No. We just left town on the 12th and come right out there, so it couldn't very well have been anything but the 13th.

Q. And you saw Mr. McKenzie, and he was aboard the boat?

A. He was aboard the boat.

Q. What time of day did you go into Red Fish Bay on the 13th? A. On the 13th?

Q. Yes; in the closed area for salmon fishing.

A. In the evening.

Q. What time?

A. I don't remember exactly what time; it was before dark.

Q. How long would you say before dark? Don't you want to answer that question? [97]

A. I have no objection to answering the question.

(Testimony of Hugh Harris.)

Q. Then state how long before dark it was before you went into the Bay.

A. I believe it was around four or five o'clock in the evening when we got in there.

Q. Four or five o'clock in the evening?

A. The 13th.

Q. How long did you stay up there?

A. We stayed for a while; while he was on the boat. He had dinner.

Q. Do you remember how long you were in the closed area? A. Not exactly; no.

Q. You don't want to remember, do you?

A. Well, I don't know exactly what you mean by that—I "don't want to remember."

Q. Answer the question. You don't want to remember how long you were out in Red Fish Bay in the closed area?

A. I don't remember exactly.

Q. Answer my question. You don't want to say how long you were up there?

A. That is a statement.

Q. If you don't want to answer. You were there on the 13th. Were you in Red Fish Bay on the 14th? A. No.

Q. Do you know what day August 14th was?

A. Saturday.

Q. Then you could have been fishing on August 13th at the time you were up there in the Bay, couldn't you?

A. Not very well, not with a watchman aboard.

Q. You said you went in there early in the evening of August 13th; is that right?

(Testimony of Hugh Harris.)

A. That is what I said.

Q. And then you could have been fishing in open water during the time that you were up in closed water, couldn't you?

A. If the tide had been right.

Q. Was the tide right?

A. No, it wasn't.

Q. Do you remember?

A. We would have been out fishing.

Q. You don't know what the tide was?

A. I don't remember whether it was incoming or outgoing.

Q. Answer the question. You could have been fishing about four or five o'clock on August 13th if you knew where to fish?

A. If there was fish.

Q. You could have been fishing at those hours?

A. Yes.

Q. Instead you were up here, in a closed area, anchored; is that right?

A. Yes. [99]

Q. And that was on a Friday. Now, where were you on August 14th?

A. Whale Bay.

Q. Whale Bay? A. Yes.

Q. Did you go to Whale Bay—you went to Whale Bay from Red Fish Bay?

A. Yes.

Q. And what time did you get to Whale Bay?

A. We got there real early Saturday morning and fished there all day.

Q. You fished in Whale Bay all day?

A. Yes.

(Testimony of Hugh Harris.)

Q. Did you fish in Red Fish Bay on August 14th?

A. No, we didn't fish in Red Fish. We fished in Whale Bay on the 14th.

Q. When did you next go to Red Fish Bay?

A. We came back there again on Sunday.

Q. That was on August the 15th?

A. Yes.

Q. What time of the day was that?

A. I don't remember what time of the day it was exactly.

Q. Well, you know about whether it was in the afternoon or morning, don't you?

A. No. We left—we came down there that morning—let's see— [100] ordinarily it is around a three-hour run between Red Fish and Whale Bay.

Q. What time were you in Red Fish Bay on August 15th? A. What time?

Q. What time did you get up into Red Fish Bay?

A. Well, I don't remember exactly what time it was. We was monkeying around there.

Q. How long were you up there in Red Fish Bay? A. We anchored that night.

Q. Did you go in Red Fish Bay on the morning of August 15th? A. Sunday?

Q. Yes. A. Yes.

Q. And you didn't anchor until that night?

A. We anchored at ten fathom anchorage.

Q. What time did you anchor at ten fathom anchorage?

(Testimony of Hugh Harris.)

A. I don't recall the exact time.

Q. Then you admit you were in the closed area up there on the morning of August 15th?

A. Up there?

Q. In that area?

A. All around there.

Q. Did you sail around in that closed area?

A. We were not sailing.

Q. Were you in that closed area? [101]

A. We drifted around in there.

Q. What were you doing up there drifting around in that closed area? Looking for fish?

A. I wouldn't know whether we were looking for fish or not. We had dinner and took a nap. We were waiting for weather to go on to town.

Q. And looking for any fish that was up in that closed area, were you not? A. No.

Q. Do you mean to tell the jury you were a fisherman and in a closed area and not looking for fish?

A. Not on Sunday, we don't usually look for fish.

Q. You didn't see any?

A. They were jumping.

Q. You looked then?

A. You can see them without necessarily looking for them.

Q. You told the jury you caught some fish on August 10th; didn't you say you caught those fish, some red fish, just south of the red line that separates the closed area from the open area?

A. Did I say the 10th?

(Testimony of Hugh Harris.)

Q. That is what I understood.

A. I thought I said the 9th, the day the season opened.

Q. Did you fish then on August 10th?

A. Yes. [102]

Q. That was——

A. Way south of the line; coming up Sumner Straits.

Q. Did you say about 1200? A. Yes.

Q. Sockeye, red fish? A. Yes.

Q. That is actually what you caught, about 1200 fish? A. That is what I said.

Q. And you sold those to Kaylor & Dahl Company in Petersburg? A. Yes.

Q. Didn't you say that you were back fishing up here on Baranof Island after August the 10th?

A. Yes. On the 14th.

Q. When did you leave Baranof Island to go to Petersburg? A. Baranof Island?

Q. Yes.

A. I think we left there on Sunday—early Monday morning, real early—for town.

Q. All right. Now, tell the jury why you went from Baranof Island all the way to Petersburg to sell the fish?

A. To get the price for them.

Q. You mean they pay a different price at Petersburg than up on the Island?

A. We couldn't go to Sitka on account of the weather.

(Testimony of Hugh Harris.)

Q. You know where Port Alexander is? [103]

A. They don't buy fish there.

Q. How do you know?

A. They don't sell red salmon.

Q. Did you go there on or before August 10th and try to sell any?

A. No; because they weren't buying.

Q. You didn't go there to sell salmon before this, did you?

A. Most every fisherman knows where he can sell his fish.

Q. Do you mean to tell the jury the fish buyer at Port Alexander at the south end of Baranof Island doesn't buy fish?

A. He is in the business of troll-caught salmon and halibut.

Q. Are you sure of that? A. Yes.

Q. You didn't know it August 10th?

A. Yes, I knew. Besides, I wasn't running the boat.

Q. Is that the reason you went with the boat to Petersburg? A. It could be.

Q. That was the reason you went to Petersburg, wasn't it; and then after August 10th you came all the way back up to Baranof Island to fish again?

A. Yes.

Q. And on the 13th, I believe, you went into Red Fish Bay; isn't that what you said a while ago?

A. That is what I said.

(Testimony of Hugh Harris.)

Q. You saw Mr. McKenzie at that time? [104]

A. Yes.

Q. When was the next time you were in Red Fish Bay?

A. Didn't I say we come down on Sunday?

Q. I am asking you. I have really forgotten. When was it? Was that the 15th?

A. It was Sunday.

Q. Did you see Mr. McKenzie at that time?

A. Yes, I seen him all right.

Q. He was aboard your boat at that time?

A. I don't think he was on Sunday. Yes, he was. He come out in the skiff.

Q. Where was he when you saw him? Was he on the beach or where was he when you saw him?

A. I seen him on the beach all right.

Q. That was on the 15th. You said your name is Hugh Harris? A. Yes.

Q. Now, Hugh, state whether or not you were convicted for illegal fishing in the United States Commissioner's Court at Sitka, Alaska, on or about the 26th day of August, 1947?

Mr. Stabler: We object to that, if the Court please, for the reason that he is attempting to impeach. He can ask if he was convicted of a crime, but not a specific crime.

The Court: Objection overruled.

A. I plead guilty to a charge of illegal fishing in Sitka.

Q. In the United States Commissioner's Court.

(Testimony of Hugh Harris.)

at Sitka on [105] August 26, 1947? A. Yes.

Q. Then you were convicted then upon your plea of guilty?

A. Yes. I paid a fine.

Q. And you are the brother-in-law of Kurt Nordgren? A. Yes.

Q. And the brother of Richard Harris?

A. Yes.

Mr. Baskin: That is all.

Redirect Examination

By Mr. Stabler:

Q. Just one question. Did the fact that you ran to Petersburg—because you lived in Petersburg, did that have anything to do with your running to Petersburg with your fish?

A. The main reason we went to Petersburg was that the price amounted to almost four or five hundred dollars difference on the fish that we had, the difference between the fish prices, and we took them into the cannery in Petersburg.

Q. Now, you were also charged with a violation of fisheries laws in this case too, weren't you?

Mr. Baskin: We object to that.

The Court: I thought I ruled on that.

Mr. Baskin: The Court has ruled on it.

The Court: Objection sustained. [106]

Mr. Stabler: That is all.

Recross-Examination

By Mr. Baskin:

Q. I would like to ask another question. You

(Testimony of Hugh Harris.)

said that they pay four hundred and fifty or five hundred dollars difference in Petersburg for fish than they do up near Sitka?

A. Almost; three hundred anyhow.

Q. You sold 1200 fish, approximately 1200 fish?

A. Yes.

Q. And you said you got about \$1600.00 for them?

A. Something over sixteen hundred.

Q. And then at Sitka or Port Alexander or any of the places near the south end of Baranof Island, they would only pay about a thousand dollars for the fish you had?

A. A little more; Sitka would probably pay a little more, but it was a tough run for us around there with the boat.

Q. Are you telling the jury that at Sitka they would pay about a thousand dollars, and more at Petersburg?

A. I will retract the statement and say four hundred, awful close to that, on that much fish.

Q. Why was it more at Petersburg than at Sitka?

A. Maybe they were more anxious to get the fish. It has always been that way.

Q. On or about August 10, 1948, did you go to Sitka to find [107] out the price of fish?

A. I explained to you before we usually know prices of fish before we go fishing.

(Testimony of Hugh Harris.)

Q. Doesn't the price of fish vary during the season by different buyers and bidders?

A. Yes, somewhat; usually though it is later on in the season.

Mr. Baskin: That is all.

Mr. Stabler: That is all.

(Witness excused.)

RICHARD HARRIS

called as a witness on behalf of the defendant, being first duly sworn, testified as follows on:

Direct Examination

By Mr. Stabler:

Q. What is your name?

A. Richard Harris.

Q. Where do you live, Mr. Harris?

A. In Petersburg.

Q. How long have you lived in Petersburg?

A. Since about 1923.

Q. What is your occupation?

A. Fisherman.

Q. How long have you known Kurt Nordgren?

A. Oh, I know him since 1932.

Q. Were you fishing with Kurt Nordgren in the year 1948 during [108] the fishing season?

A. Yes.

Q. Do you remember when the season opened for salmon?

(Testimony of Richard Harris.)

A. I believe it opened on August the 9th.

Q. Did you go out fishing on that date?

A. Yes. We usually leave a day ahead of the season.

Q. Do you recall where you were on Monday, August 9, 1948? A. Yes.

Q. Tell the jury.

A. We was in Red Fish Bay.

Q. What boat? A. "Lois W."

Q. Who was aboard?

A. Myself, my brother Hugh, and Mr. Kurt Nordgren.

Q. What did you go in there for?

A. To see if there were any fish in there.

Q. When you say Red Fish Bay, what do you mean? This is a map of Red Fish Bay.

A. The whole bay from ten fathom anchorage and on in.

Q. You see this red line here? A. Yes.

Q. Did you go up past that red line that day?

A. Yes.

Q. What for?

A. To look and see if there were any fish up there.

Q. Why were you interested? You knew it was a closed area?

A. Yes. But not when the fish back out of there.

Q. Why did you go up there?

A. To see if there were any fish.

Q. Did you do any fishing up there that day?

(Testimony of Richard Harris.)

A. No.

Q. Do you know William McKenzie?

A. Yes.

Q. Did you see him up there that day?

A. I seen him on the beach.

Q. Tell the jury the circumstances.

A. We come in and see a tent on the beach. We figured somebody was camping there. We anchored within 100 feet of where he had his tent pitched.

Q. What happened?

A. I remember he come out on the beach. I think Kurt Nordgren went ashore and talked with him a while there.

Q. Did he come on your boat?

A. Not that day, I don't think.

Q. How long did you stay up there on the 9th, opening day?

A. Only a little while. We went out and come back in again that evening.

Q. Did you do any fishing?

A. Yes; outside the line, outside the narrows.

Q. You mean south of this red line? [110]

A. Yes.

Q. What time did you get back up there, or where did you stay that night?

A. We anchored up there that night.

Q. All night?

A. No. We left again. We went up there and we left again that same night.

Q. Did you do any fishing up there north of the red line?

(Testimony of Richard Harris.)

A. No; we never fished up there.

Q. Where did you go after you left there on that night or on Monday, the 9th?

A. We went to Petersburg.

Q. What for? A. To deliver fish.

Q. What time did you get into Petersburg?

A. Oh, I don't know, maybe between seven and eight o'clock on Tuesday; that would be the day after the season opened.

Q. How much of a run is it from Red Fish Bay to Petersburg?

A. The trip altogether—Chatham Strait, Sumner Strait, through Wrangell Narrows—takes 12-14 hours, something like that. It depends on the weather.

Q. Did you sell any fish in Petersburg that night? A. Yes.

Q. Do you remember how many?

A. No. They weigh them. They buy them by weight. I don't [111] remember what the weight was.

Q. Do you remember what they came to?

A. I believe it came to about \$1700.00.

Q. Do you know how many fish you had?

A. I wouldn't be able to say exactly how many fish we had.

Q. Who did you sell them to?

A. To Kaylor and Dahl Cannery.

Q. Did you catch any of those fish in Red Fish Bay north of that line? A. No.

(Testimony of Richard Harris.)

Q. After you sold your fish in Petersburg on Tuesday, where did you go next?

A. First we take out the fish and wash down the boat, and that was next day we took ice, and we go get gas. I think we laid there that night.

Q. In Petersburg? A. Yes.

Q. That would be Wednesday, the 11th?

A. Yes, that is right.

Q. Where did you go—what time did you leave Petersburg next? A. About noon.

Q. Of what day?

A. That would be the day—we laid in Petersburg; we sold fish the 10th, took stuff the 11th, and left about noon of the 12th. [112]

Q. And where did you go?

A. To Red Bluff Bay in Chatham Strait.

Q. Where is Red Bluff Bay with relation to Red Fish Bay? You say you went to Red Bluff Bay?

A. Red Bluff Bay. It is in Chatham Strait. It is on Baranof Island but it is on the other shore.

Q. You went from Petersburg to Red Bluff Bay? A. Yes.

Q. How long did you stay there?

A. We stayed there that night, left there early in the morning, I think, went over to Pillar Bay then—across the strait on the other side again.

Q. I am asking, were you in Red Fish Bay north of this line at any time on the 12th of August? A. No.

Q. That would be Thursday. Did you see William McKenzie that day, the 12th of August?

(Testimony of Richard Harris.)

A. No. We anchored in ten fathom anchorage when we did come down there, at first anyhow.

Q. I think you said you saw him on the 9th?

A. Yes, the 9th.

Q. Do you remember the next time you saw him?

A. It would be some time in the afternoon of the 13th.

Q. All right. You left, according to your testimony you left Red Bluff Bay and went to Pillar Bay and got to Pillar Bay [113] on the 13th?

A. In the morning, yes.

Q. Did anything happen in Pillar Bay? Did you notice any Fish and Wildlife plane?

A. The Fish and Wildlife plane was there.

Q. Where is Pillar Bay?

A. It is up in Chatham Strait; it is quite a ways from there; it is about thirty-five or forty miles at least.

Q. How much of a run is it with your boat from Petersburg to Red Bluff Bay?

A. With Kurt's boat?

Q. That is what I mean.

A. It is something like eleven or twelve hours.

Q. And from Red Bluff Bay to Pillar Bay?

A. Not very long; maybe two hours and a half.

Q. And from Pillar Bay to Red Fish Bay?

A. That is close to between four and five hours.

Q. So, you were in Pillar Bay then on Friday, the 13th? A. In the morning.

(Testimony of Richard Harris.)

Q. And saw the Fish and Wildlife plane there?

A. Yes.

Q. Where did you go from Pillar Bay?

A. We went down to Red Fish.

Q. What did you go down there for?

A. Outside of Baranof, that is where we had been fishing. [114]

Q. What did you go down there for?

A. To look for fish.

Q. Did you get any fish?

A. We got—we picked up fish as we go along. Sometime we make a set, and sometimes we don't.

Q. Do you remember what time you got into Red Fish Bay on the 13th, Friday?

A. It must have been in the early afternoon.

Q. Do you know where you anchored that night?

A. I believe we anchored in the ten fathom anchorage that night, either that time or the time before when we was there; I don't remember exactly.

Q. Did you see Mr. McKenzie that day, the 13th?

A. We seen him that trip out. I wouldn't say it was exactly the 13th.

Q. Do you remember what day it was when he came on your boat and had dinner?

A. It must have been that same day.

Q. The 13th? A. Yes.

Q. Tell us about how he happened to come out there.

(Testimony of Richard Harris.)

A. When we come in there, he come down to the beach. We come right up there, and he come down to the beach and hollered out to us to come and get him. He wanted to talk with us. We brought him out. He sat on deck for a while talking [115] about different things and had a couple bottles of beer with us and a drink of whiskey, and he ate supper too, I think, and we gave him some groceries too that same trip. He was pretty short on groceries.

Q. Did you have any fish on board at that time?

A. Yes, we had fish.

Q. How did you carry them?

A. We carry them in ice all the time.

Q. Where did you catch them?

A. I think we made a little haul outside of Red Bluff Bay. We made a little haul at that time.

Q. You mean——

A. Outside. I think we made a little haul at that time. We fished outside of Red Fish Bay too.

Q. What brought up this fish that he wanted or got?

A. Oh, he said he couldn't catch one out of the creek and was short on groceries, and we said——

Mr. Baskin: We object to the witness testifying what Mr. McKenzie said.

The Court: It is already in evidence that he asked for a fish. As to the reasons for it, it is immaterial. Did you give him a fish?

A. Oh, yes.

(Testimony of Richard Harris.)

Q. And where did you have that fish on the boat? A. We had it in the hold. [116]

Q. On ice? A. Sure.

Q. And you gave him some groceries?

A. Yes.

Q. Do you remember what groceries?

A. One——

Mr. Baskin: We object.

The Court: Sustained. It is immaterial what he gave him.

Q. What was your relations at that time with Mr. McKenzie? Were they friendly or were they otherwise?

A. Oh, he was all right. We treated him fine, and he seemed to treat us all right. There was no trouble.

Q. On Sunday, the 15th, where were you?

A. We was coming back from Whale Bay, coming back to town.

Q. Where is that?

A. Two and a half hours up to the west shore there.

Q. How was the weather outside on Sunday?

A. It was pretty fair weather except when we come down by Red Fish Cape. It was pretty good down that far but wasn't much good after that.

Q. Did you share in the fish that was sold during all of these trips? A. Sure I shared.

Q. Did you have any arrangement with William McKenzie to give [117] him a share of any fish that you caught? A. No.

(Testimony of Richard Harris.)

Q. Do you know anything about two one-hundred-dollar bills being given to Mr. McKenzie for fish caught on your boat or a share of fish caught by the "Lois W"?

A. I seen the two bills in Sitka that they said we gave to him.

Q. Do you know anything about that?

A. No, I never.

Q. Was any arrangement to your knowledge made by Kurt Nordgren or anybody else on the "Lois W" to share with Mr. McKenzie in any fish caught by the "Lois W" in Red Fish Bay?

A. No; nor any place else.

Mr. Stabler: You may cross-examine.

Whereupon, the jury was duly admonished and Court adjourned until 10:00 o'clock a.m., April 19, 1949, reconvening as per adjournment, with all parties present as heretofore and the jury all present in the box; whereupon, the trial proceeded as follows:

Cross-Examination

By Mr. Baskin:

Q. You are Richard Harris, are you not?

A. That is right.

Q. You live at Petersburg? [118]

A. Yes.

Q. Are you any relation to the defendant?

A. Yes. No, not to the defendant; no.

Q. You are not related to Kurt Nordgren?

A. No.

(Testimony of Richard Harris.)

Q. But you and Hugh Harris are brothers?

A. That is right.

Q. You fished with Kurt Nordgren during 1948?

A. Yes.

Q. And I believe you said that you were in Red Fish Bay on August the 9th?

A. That is right.

Q. At that time you saw Mr. McKenzie?

A. Yes.

Q. What time did you get up into the area of the Bay where you could see Mr. McKenzie on August the 9th?

A. It was in the afternoon.

Q. Well, about what time was it?

A. Oh, it was in the early afternoon; I don't know, say between one and three o'clock, something like that.

Q. Between one and three o'clock?

A. Yes.

Q. Could it have been two o'clock?

A. It might have been. It was between one and three.

Q. All right. How long did you stay there?

A. Not very long; just a little while.

Q. How long would you say?

A. Oh, maybe half an hour.

Q. What did you do then?

A. We went outside the Bay.

Q. You mean outside the closed area?

A. Clear out, outside of the closed area.

(Testimony of Richard Harris.)

Q. Did you come back into the Bay that evening, into the closed area? A. That evening?

Q. Yes.

A. No; I don't remember exactly whether we come back into the Bay that evening. I think we started for town that same evening, that same night about eight o'clock.

Q. You mean you started for town about eight o'clock. A. Yes.

Q. Then you spent from about one to three o'clock, and then until eight o'clock, up in the closed area? A. No; I didn't say that.

Q. Then where were you from three until about eight o'clock?

A. We were fishing outside the area.

Q. Outside?

A. That is where we always fished.

Q. You hasten to say that, don't you?

A. No. [120]

Q. When did you go to Petersburg.

A. That same evening about eight o'clock.

Q. Didn't you say you arrived at Petersburg on the 10th of August?

A. Yes; at Petersburg at Kaylor & Dahl's Cannery about eight o'clock in the evening.

Q. Eight o'clock in the evening?

A. About that time, close to it.

Q. How long a run is it from Red Fish Bay to Petersburg?

A. It depends on a lot of things.

(Testimony of Richard Harris.)

Q. How long did it take you then to go from Red Fish Bay to Petersburg?

A. I would say, on the average, between twelve and fifteen hours; it depends on the weather and the tide; sometimes longer.

Q. When did you return to Red Fish Bay?

A. We didn't come back; we didn't come straight back to Red Fish Bay from Petersburg.

Q. I believe you said you come back to Red Fish Bay on the 13th; is that correct? A. Yes.

Q. You are sure it was the 13th that you were in Red Fish Bay? A. Yes.

Q. You couldn't be mistaken as to the date, could you?

A. I don't hardly think so because I remember it was Friday, [121] the 13th, we were in Pillar Bay, and we went from Pillar Bay to Red Fish Bay.

Q. And that is the way you know you were in Red Fish Bay?

A. That is one way I remember. You don't keep track of every minute on the calendar; you haven't got time when you are fishing.

Q. I understand that. What time of day on the 13th did you go into Red Fish Bay?

A. Oh, that would be sometime in the early afternoon again.

Q. Early afternoon? A. Yes.

Q. All right. And then you said that you saw Mr. McKenzie that day? A. On the 13th?

(Testimony of Richard Harris.)

Q. Yes.

A. Yes. That is the day he come aboard the boat.

Q. And had dinner with you? A. Yes.

Q. That was the evening meal, was it not?

A. Yes.

Q. When were you in Red Fish Bay—were you in Red Fish Bay at any time after that?

A. We were in Red Fish Bay after that; yes.

Q. When was that?

A. Oh, I think, when we come down from Whale Bay on the way to [122] town, on the Sunday afternoon, we stopped at Red Fish Bay and anchored in ten fathom anchorage there.

Q. Did you go in the closed area at Red Fish Bay on the 15th? A. The 15th, Sunday?

Q. Yes. A. I believe we did; yes.

Q. And you saw Mr. McKenzie?

A. Couldn't help but see him in there.

Q. Just answer the question. You saw Mr. McKenzie on the 15th of August, 1948?

A. Yes, I believe we did.

Q. Did you talk with him?

A. Well, we talked with him every time we come in the Bay except the first time.

Q. Then you talked with him on August 15th?

A. Yes.

Q. And was Kurt Nordgren there when you talked with him?

A. He was on the boat with us.

(Testimony of Richard Harris.)

Q. You mean Mr. McKenzie was on the boat that time?

A. Whenever we come in there, he come down and hollered for us to come down and get him.

Q. Did you fish on the 16th?

A. No. On the 16th we was on our way to Petersburg.

Q. When you saw Mr. McKenzie, Richard, tell the jury whether you knew or thought he was a stream watchman? [123]

A. Well, you can't tell whether a man is a stream watchman or not. Lots of people camp on the beach. When we come in we hollered to him the first time to find out who he was, if he was stranded or needed help. We always do that in Alaska.

Q. You knew he was a stream watchman?

A. Certainly; but that doesn't make us not talk to him.

Q. Now, tell the jury whether or not you were convicted in the United States Commissioner's Court at Sitka, Alaska, on or about the 27th day of July, 1944, for illegal fishing.

A. Yes. I was guilty and I plead guilty.

Mr. Baskin: That is all.

Mr. Stabler: That is all. Call Chris Dahl. I would like to call Mr. Dahl a little out of order, if the Court please; he wants to get away this afternoon.

The Court: You may do that.

CHRIS DAHL

called as a witness on behalf of the defendant, being first duly sworn, testified as follows on:

Direct Examination

By Mr. Stabler:

Q. What is your name?

A. Chris Dahl.

Q. Where do you live, Mr. Dahl? [124]

A. Petersburg.

Q. How long have you lived in Petersburg?

A. Since 1925.

Q. What is your business down there?

A. I am a cannery operator.

Q. What is the name of your business?

A. Kaylor-Dahl Fish Company, Incorporated.

Q. Are you pretty well acquainted around Petersburg? A. Yes.

Q. Do you know Kurt Nordgren?

A. Yes, sir.

Q. How long have you known Mr. Nordgren?

A. Oh, I don't know; it must be fifteen years anyway; fifteen or twenty years. I don't remember exactly when I first got to know him, but I know it was a long time ago.

Q. Do you know Richard Harris?

A. Yes, sir.

Q. How long have you known him?

A. Ever since we were kids around Petersburg.

Q. Do you know his brother Hugh Harris?

A. Yes. I know both of them—Richard and Hughie.

(Testimony of Chris Dahl.)

Q. That is Hugh? A. Yes.

Q. How long have you known him?

A. I have known him too since he was a small boy. [125]

Q. Do you know the general reputation of Petersburg, Alaska—that is, what people generally say—of Kurt Nordgren of being a peaceable and law-abiding person?

Mr. Bailey: Your Honor, I am going to object to that for two reasons.

The Court: Objection sustained.

Mr. Bailey: I am going to object to “do you know.” It should be “have you heard.”

The Court: Not necessarily. Of course it has to be based on what he heard. But if the form of the question is if he knows what the reputation is—reputation is what he hears—of course it is permissible. But it has to be limited to a trait involved in this prosecution.

Mr. Stabler: I think——

The Court: This isn't a fight or homicide.

Mr. Stabler: I will say “law-abiding.”

The Court: It has to be a specific trait—in this case, honesty and integrity.

Mr. Stabler: Exception.

Q. Do you know the general reputation of Petersburg, Alaska, of the veracity——

Mr. Stabler: Is that what the Court said?

The Court: No. Honesty and integrity.

Q. Honesty and integrity of Kurt Nordgren; do you know that? A. Yes. [126]

(Testimony of Chris Dahl.)

Q. Is it good or bad? A. It is good.

Q. Do you know the general reputation at Petersburg of Hugh Harris—the same trait?

A. It is good.

Q. And Richard Harris? A. Good.

Mr. Stabler: You may cross-examine.

Cross-Examination

By Mr. Bailey:

Q. You have lived in Petersburg since 1925?

A. That is right.

Q. You have known the defendant Kurt Nordgren since about 1935?

A. Yes; I knowed him in 1935.

Q. Who have you talked to about his reputation? Tell me some of the people you have talked to.

The Court: You have to make that question more specific—reputation for honesty and integrity, not something else.

Q. Tell me who you talked to about Kurt Nordgren's reputation for honesty and integrity.

A. That is hard to say. Since 1935 I have talked to hundreds of people. I just can't pick out—

Q. Just tell me a few of them. What were their names? If you can't, it is all right.

A. I can't think of any names right off hand.

Q. Now, did you know that Kurt Nordgren was arrested in Sitka, Alaska, in 1944 for illegal fishing?

A. Yes.

(Testimony of Chris Dahl.)

Q. Did you know that he was arrested in 1947, for illegal fishing, in Sitka, Alaska, and convicted?

A. I heard something about it; yes.

Q. I asked if you knew it?

A. No. But I did hear something about that.

Mr. Bailey: That is all.

Mr. Baskin: Wait just a minute.

Mr. Bailey: Your Honor, I don't think this man is competent to testify to the honesty and integrity of this individual. He has talked to hundreds of people and can't cite one instance. I ask that it be stricken from the record.

The Court: Well what is your testimony that the defendant has a good reputation for honesty and integrity, based on?

A. Well, as I say, I have known the man for years, and when I come to think of it—you know it is kind of hard to say. I might have talked to you or to anyone about Kurt Nordgren years ago, but it is awful hard to pick just one person. If I have a little time to sit down and think about it, I [128] might be able to write down one hundred. I can say absolutely truthfully that Kurt Nordgren——

The Court: It is not what he is in your opinion, not what you know him to be. It is reputation now and that is something else. I didn't ask you the difficulties of remembering anybody's name. But I asked you on what your testimony is based.

A. His reputation is good in Petersburg.

(Testimony of Chris Dahl.)

The Court: On what is that based; that statement you just made that his reputation is good, what is that based on? In other words, is it your own opinion, what you yourself know, or what you heard others say?

A. It is probably both what I heard others say and what I know. In other words, I have never heard anyone referring to Kurt Nordgren as a criminal or as a person who you have to be ashamed to associate with or anything of that sort.

The Court: Did you ever hear the word integrity used?

A. Yes.

The Court: What does it mean?

A. Well, it means—oh, I can't—I know what it means, but I can't explain it.

The Court: Then, as I understand it, your testimony is based partly on what you know or what you believe, and partly on what others have said; is that it?

A. That is right. [129]

The Court: Well, how much of it is based on your own knowledge or belief?

A. Well, I would say that ninety per cent of it is anyway.

The Court: On what you yourself know?

A. Yes.

The Court: Well, I think under those circumstances the testimony will have to be stricken.

Mr. Stabler: We take an exception.

(Testimony of Chris Dahl.)

The Court: The testimony is stricken, and the jury is instructed to disregard it, unless you want to cross-examine as to what that ten per cent is based on; ninety per cent is of his own knowledge.

Redirect Examination

By Mr. Stabler:

Q. Mr. Dahl, have you heard people say generally in Petersburg that Mr. Nordgren is an honest man? A. That is right.

Q. That particular word, "integrity," though you might not have used it, you know what it means, do you?

A. I couldn't give you the exact definition of it, but—oh, I guess I am just a little rattled; I can't seem to think.

Q. You say about ten per cent of what you know about Kurt Nordgren is what you have heard others say? A. Yes. [130]

Q. And that ten per cent is where hundreds of people have discussed this Nordgren?

A. Probably hundreds during the time I have known him.

Q. About the traits of honesty and integrity?

A. That is right.

Q. And that ten per cent takes in quite a number of people; is that right? A. It sure does.

Q. They generally say of him in Petersburg that he is an honest man and a man of integrity; is that right? A. Yes.

(Testimony of Chris Dahl.)

Q. And you know him personally yourself and you also have your own opinion? A. Yes.

Mr. Stabler: I think that is all.

The Court: That part about his own opinion is stricken, and the jury is instructed to disregard it.

Mr. Stabler: Does the Court instruct the jury they may consider the other?

The Court: I have only stricken that part which is of his own knowledge; that is wholly incompetent.

(Witness excused.) [131]

KURT NORDGREN

called as a witness on his own behalf, being first duly sworn, testified as follows on:

Direct Examination

By Mr. Stabler:

Q. What is your name?

A. Kurt Nordgren.

Q. Where do you live, Mr. Nordgren?

A. Petersburg, Alaska.

Q. How long have you lived in Petersburg, Alaska?

A. Nineteen years this year.

Q. And do you have a family down there?

A. Yes.

Q. What does your family consist of?

A. I have got——

(Testimony of Kurt Nordgren.)

Mr. Baskin: We object. It is immaterial.

The Court: Objection sustained.

Q. Are you a married man? A. Yes.

Mr. Baskin: We object to that.

The Court: I think it is highly improper.

Mr. Baskin: Whether he has a wife and family are not material.

The Court: The jury cannot take extraneous matters of that kind into consideration. I think in the face of the Court's ruling a moment ago—

Mr. Stabler: I would like to take an exception on the ground that a man with a family—

Mr. Baskin: We object to counsel reciting—

The Court: Yes. I have already ruled that matters of that kind are always improper to be presented to a jury because of the fact that the jury is instructed that they must not take matters of that kind or matters touching their sympathy into consideration. Any evidence of that kind in any case ignores the Court's instructions and the oath they have taken to decide the case on the law and the evidence.

Mr. Stabler: We take exception to the Court's ruling on the ground—I would like to state my grounds, if the Court please.

The Court: Well, perhaps—you may approach the bench.

Whereupon, Mr. Baskin, Mr. Stabler and the court reporter approached the bench, out of hearing of the jury, and the following took place:

(Testimony of Kurt Nordgren.)

Mr. Stabler: The grounds are that, if a man is shown to have a family consisting of a wife and children, it is evidentiary of the fact that such a man is less apt to commit an offense such as that charged than if it would be a man without any such family responsibilities.

The Court: Conversely, if it was a person of bad associations, the prosecution would be able to prove that. That is what makes it wrong. [133]

Whereupon, Mr. Baskin, Mr. Stabler and the court reporter withdrew from the bench and were again within hearing of the jury, and the trial proceeded as follows; the direct examination of the defendant being continued by Mr. Stabler:

Q. What is your occupation in Petersburg, Mr. Nordgren? A. I am a fisherman.

Q. How long have you been engaged in that occupation? A. About twelve years.

Q. What kind of fishing do you do?

A. Salmon and halibut.

Q. Do you have a boat? A. Yes, I have.

Q. What is the name of it? A. "Lois W."

Q. How long have you had that boat?

A. I just bought it two years ago.

Q. What kind of a boat is that?

A. A "V" bottom, combination halibut and seiner.

Q. Calling your attention to Monday, the 9th day of August, 1948, which, I believe, was the

(Testimony of Kurt Nordgren.)

opening day for fishing salmon in Southeastern Alaska, do you recall that date?

A. Yes, I do.

Q. What did you do on that date with reference to going out fishing or preparing for fishing?

A. We was looking for fish. [134]

Q. Where did you go—when did you leave Petersburg?

A. We left Petersburg on the day before.

Q. On August the 8th? A. Yes.

Q. On what boat? A. The "Lois W".

Q. And who was with you?

A. Richard and Hughie Harris.

Q. Was anybody else on your boat?

A. No, sir.

Q. Where did you go?

A. We took in some of the country coming from Frederick Sound, Chatham Strait, and wound up in Red Fish Bay on the 9th.

Q. What time?

A. I would say it was around noon.

Q. What were you doing in Red Fish Bay, and what part of Red Fish Bay were you in?

A. We was in the whole bay.

Q. What did you go there for?

A. Looking for fish. That is what we always do. Any fishermen take a look in all the bays before they go fishing.

Q. Was it unlawful to fish in Red Fish Bay at that time?

(Testimony of Kurt Nordgren.)

Mr. Baskin: Your Honor, I would like counsel to specify what part.

The Court: Yes. That takes in a little too much.

Mr. Stabler: I am going to.

Q. I will ask you to step down here, Mr. Nordgren. Stand over there so the jury can see.

A. This whole country outside, Pacific Ocean, Chatham Strait, Frederick Sound, Red Fish, clear out to here, you can fish anywhere. This is closed north of that line. But we always look for fish coming in and going out. It is no crime to be there.

Q. On Monday, the 9th of August, you went over into Red Fish Bay?

A. Yes, we did go in there.

Q. Did you go north of this red line here?

A. Yes, we did.

Q. Which is—that red line is that what—what do you call that?

A. That is the Fisheries' markers there.

Q. What part do you call that?

A. The second narrows.

Q. That red line is on the second narrows?

A. Yes.

Q. When you refer to the second narrows, you refer to——

A. North of the second narrows is closed at all times.

Q. What do you call the first narrows?

A. Coming in there past them islands.

(Testimony of Kurt Nordgren.)

Q. Farther south is the first narrows and where the red line [136] is is the second narrows?

A. That is right.

Q. And it was lawful to fish there south of that red line?

A. Absolutely. We fished there lots of times, lots of years.

Q. Did you go north of that red line on the 9th of August? A. Yes, we did.

Q. What for?

A. To see what was up in the bay.

Q. What is the habit or custom of fish with respect to tides?

Mr. Baskin: We object. He isn't qualified as an expert as to the nature of fish.

The Court: It is getting a little far——

Mr. Baskin: It is immaterial, and we object.

The Court: This is not a case of violation of fisheries laws.

Mr. Stabler: It would be proper to show what he was up there for.

The Court: If it was cross examination, but not as part of your case.

Q. Did you see anybody up there on August 9th? A. Yes.

Q. Who? A. Bill McKenzie.

Q. What were the circumstances? I will ask you first if you knew him before that? [137]

A. No.

Q. What were the circumstances under which you met and saw him that day?

(Testimony of Kurt Nordgren.)

A. We went up in the bay. We saw a couple fish jumping, and we went up, and we saw a tent on the beach. We didn't know who it was. You meet strangers all over Alaska.

Mr. Bailey: I am going to object to the witness testifying in narrative form unless he is more responsive.

The Court: Unless there is some good reason, he should testify responsively, and not in narrative form.

Q. Did you have any conversation with Mr. McKenzie on August 9th—that would be Monday?

A. Yes.

Q. What was it?

A. He come down on the beach from the tent. He had a boat alongside. We always anchor there. I didn't go ashore. He talked from the beach right aboard the boat.

Q. What about.

A. I asked who he was and if he was stranded or what. That is all.

Q. What did he say?

A. He said he was stationed there.

Q. Now, about what time of the day was that?

A. That was around noon, I would say.

Q. Did you do any fishing there that day north of this second [138] narrows or this red line shown on the chart? A. No.

Q. Did you do any fishing that day at all?

A. Yes.

(Testimony of Kurt Nordgren.)

Q. Where? A. Outside; yes. Outside——

Q. Come down here.

A. Right off these points right here on the outgoing tide; the first narrows; sometimes off of this point.

Q. Between the first and second narrows?

A. That is right. (Witness resumed the witness stand.)

Q. Did you catch any fish? A. Yes.

Q. Did you go into the bay north of this red line after that? A. Yes, we did.

Q. That day? A. Yes, we did.

Q. What time did you get up there?

A. It was toward evening.

Q. How long did you stay there?

A. Not very long; maybe half an hour or so.

Q. Did you do any fishing that time north of the red line? A. No.

Q. After the half-hour what did you do?

A. The watchman came out, and I went ashore. I talked to him. [139] His general conversation—he was glad to see somebody come in there, so we talked for a little while; and then we went out again.

Q. Did you talk to him about any arrangements for letting you fish there? A. No.

Q. What did you talk about?

A. The weather, fishing, and how much fish has come up the stream, and general conversation when you meet a man on the beach.

(Testimony of Kurt Nordgren.)

Q. Did you at that time or at any other time tell him he could make four hundred and fifty or five hundred dollars or any sum like that?

A. No, I didn't.

Q. If he allowed you to fish in there?

A. No, I didn't.

Q. Did you have any arrangement of any kind with Mr. McKenzie to let you fish in there in violation of the law?

A. No, I didn't.

Q. After you were there a half-hour, where did you go?

A. Back outside.

Q. What did you do?

A. We made one more haul outside that line and anchored in ten fathom anchorage.

Q. Where is that? [140]

A. That is outside.

Q. Come down and show us where it is.

A. Right in here. That is the anchorage. You can anchor almost any place inside the slope of the ocean.

Q. You stayed there that night, or how long?

A. Until about midnight, waiting for the tide.

Q. Then what did you do?

A. Headed for Petersburg.

Q. Did you make any sets on your way to Petersburg?

A. One.

Q. Where?

A. Shipley Bay.

Q. Can you point that out to us on this chart?

A. It is not on there.

Q. Here is No. 8252?

(Testimony of Kurt Nordgren.)

A. It is not on that one.

Q. Generally, where is it?

A. You have got to go around Cape Ommaney, across Chatham to Cape Decision, and it is about a two-hour run up to Sumner.

Q. You made a haul there? A. Yes.

Q. Where? A. Shipley Bay.

Q. Where did you go from there?

A. To town. [141]

Q. Where? A. Petersburg.

Q. When did you get in Petersburg ?

A. Seven-thirty or eight o'clock.

Q. Did you have any fish? A. Yes.

Q. How many?

A. They weighed them. The approximate number was eleven or twelve hundred, maybe thirteen.

Q. What did you do? A. We sold them.

Q. Who to? A. Kaylor & Dahl.

Q. Dahl, who testified here? A. Yes.

Q. Do you recall how much you got for your fish?

A. Seventeen hundred and some dollars.

Q. Were any of those fish caught north of this red line in Red Fish Bay?

A. No, it wasn't.

Q. Where were they caught?

A. They was caught outside the red line and at Shipley Bay.

Q. Did you say what time you got into Petersburg? A. Seven-thirty or eight o'clock.

Q. Tuesday, the 10th? [142]

(Testimony of Kurt Nordgren.)

A. On the 10th in the evening.

Q. What did you do after that?

A. We unloaded the fish that night.

Q. And then what?

A. Then we went home.

Q. You all live in Petersburg?

A. That is right.

Q. Did you go out again?

A. Not that night; no.

Q. When did you go out next?

A. We went and left Petersburg the 12th.

Q. You were in Petersburg all day then on the 11th, Wednesday? A. Yes.

Q. Did you do anything there to get ready for the next trip? A. Yes.

Q. What?

Mr. Baskin: We object to this line of questioning. It has nothing to do with this case.

The Court: The preparation for going out again—I can't see its materiality or relevancy.

Q. You were in Petersburg all day the 11th?

A. Yes.

Q. What time did you leave Petersburg on the next trip? A. Around noon on the 12th.

Q. That would be Thursday? [143]

A. Yes.

Q. Where did you go?

A. We was going to go out fishing again.

Q. Where did you head for to go fishing?

A. Red Bluff Bay.

(Testimony of Kurt Nordgren.)

Q. Is that on this map? A. No, it isn't.

Q. Where is it?

A. In Chatham Strait. It is about eighty or ninety miles from Petersburg in Chatham Strait.

Q. How about from Red Fish Bay?

A. About fifty or sixty.

Q. This is Red Bluff Bay?

A. Yes. It is a long ways from there.

Q. What did you do there?

A. We got there in the dark so we anchored up until next morning.

Q. Until the morning of the 13th?

A. Yes, sir.

Q. Did you make any sets there?

A. No. We looked the bay over and then left.

Q. Where did you go on Friday, the 13th?

A. From there right around the corner, and there is Sockeye Bay, and we looked there, and from there we went to Pillar Bay looking for fish. [144]

Q. What time did you get into Pillar Bay?

A. That was in the morning around eight or nine o'clock, I would say.

Q. Did anything occur there that you remember?

A. There was a Fisheries' plane come in, and we talked to them.

Q. That is in Pillar Bay?

A. That is in Pillar Bay in Chatham Strait.

Q. Where did you go from Pillar Bay?

(Testimony of Kurt Nordgren.)

A. To Red Fish Bay.

Q. What time did you get to Red Fish Bay?

A. Early afternoon.

Q. Of Friday, the 13th?

A. That is right.

Q. Were you in Red Fish Bay Thursday, the 12th of August, 1948? A. No, sir.

Q. So you got up there on Friday, the 13th, about what time?

A. Early in the afternoon.

Q. What did you do up there?

A. We went in and looked and saw some fish jumping. The tide was wrong so we beat it up in the bay.

Q. What did you do up there?

A. Anchored and was going to have supper.

Q. Will you show us where you anchored? [145]

A. We anchored right up in here in the two and one-half fathom mark up here.

Q. You are talking about Friday, the 13th?

A. Yes, sir.

Q. Did you see Mr. McKenzie up there?

A. Yes, sir.

Q. How far was his tent from where you anchored?

A. Maybe three hundred feet, four hundred feet.

Q. Did you have any conversations with him?

A. Yes.

Q. What were they?

(Testimony of Kurt Nordgren.)

A. He come down on the beach there, and I went ashore in the skiff to get him, and he had supper with us.

Q. Tell what you did there that night; what conversations; what you did.

A. He come aboard. We talked a while. He had supper with us. We asked him if he needed any grub. We gave him some. We asked if he wanted beer. He had beer and a couple drinks of whiskey. We gave him some groceries and put him ashore.

Q. How did you happen to give him groceries?

A. He asked if we could. We just came from town.

Mr. Bailey: We object. It is immaterial and not in issue at all.

The Court: It has been testified to. I don't see how it can prove or disprove anything. Since it has been gone [146] into, you may go into it. Try to make it brief.

Q. You say he asked for these groceries?

A. That is right.

Q. What groceries did you give him?

A. Some canned chicken, corned beef, bologna, carrots and celery, and I am not sure if we gave him a loaf of bread. That is about all.

Q. How long did you stay there?

A. We didn't stay long. After we ate supper we went right out again.

Q. What time was it he was aboard the boat?

A. That was in the afternoon.

(Testimony of Kurt Nordgren.)

Q. You say right after you had your dinner, your meal, you went out?

A. I took him ashore, went back, and we hauled anchor and left.

Q. Where did you go?

A. We made one set outside the marks that evening and then anchored at ten fathom anchorage.

Q. You went out of the line at the second narrows?

A. Yes.

Q. And anchored where?

A. Ten fathom anchorage.

Q. How long did you stay at that anchorage?

A. All night, until ten o'clock in the morning.

Q. Then where did you go?

A. Whale Bay.

Q. Where is that?

A. Up the north coast about a two-and-a-half hour run.

Q. Did you do any fishing?

A. We fished all day.

Q. In Whale Bay?

A. Yes, we did.

Q. That would be Saturday?

A. That was Saturday.

Q. Now, where did you stay that night?

A. We stayed there that night.

Q. In Whale Bay?

A. That is right.

Q. Where did you go next?

A. We was heading for Petersburg again.

Q. And on Sunday, the 15th, what did you do?

A. We was on our way to town, following a

(Testimony of Kurt Nordgren.)

southwest sea, and decided to go into Red Fish Bay and wait for weather.

Q. How was the weather?

A. It was picking up.

Q. Did you see Bill McKenzie? A. Yes.

Q. Tell the jury about that.

A. We went in the bay and dropped the hook. He came aboard [148] and had a couple drinks. He asked for a fish. We opened up and got one for him on the ice. He said he was afraid of bears up the creek and couldn't get one.

Q. Did you get any fish that day?

A. No. It was a Sunday. Everything is closed.

Q. How long did you stay there?

A. Just a little while, and we pulled out to the anchorage to watch the weather.

Q. What time did you go in there?

A. I guess around one o'clock.

Q. I mean how long were you in the bay north of the red line? A. Maybe an hour.

Q. And you pulled out to the anchorage?

A. At ten fathom.

Q. How long did you stay at ten fathom?

A. We stayed there all that night.

Q. Then where did you go on the 16th?

A. We pulled out for Petersburg again.

Q. I think the season was closed on the 16th?

A. We didn't know the season was closed on the 16th. It was closed we found out when we got to town.

(Testimony of Kurt Nordgren.)

Q. Did you do any fishing north of this red line in the second narrows on the 15th of August?

A. No, sir.

Q. On the 16th of August? [149]

A. No, sir.

Q. Or any other time in August?

A. No, sir.

Q. You heard the testimony of Mr. McKenzie here about you offering him two one-hundred-dollar bills?

A. Yes, I did.

Q. Is that true or false?

A. I don't see how it could be true; I didn't give it to him.

Q. Did you have any arrangement whatever with Mr. McKenzie to allow you or your boat or your crew to fish or take fish north of the second narrows, where this red line is, on August the 9th, on August the 12th, 13th, 15th or 16th, or at any other time?

A. No, sir.

Q. So, on the 16th, you say, you went to Petersburg?

A. That is right.

Q. And did you ever go back to Red Fish Bay after that time?

A. Yes.

Q. When?

A. After the season opened again.

Mr. Baskin: Your Honor, I don't see where that is material.

The Court: Yes—I don't either; and let's try to shorten this up.

Q. I mean, did you ever see Mr. McKenzie

(Testimony of Kurt Nordgren.)

again in Red Fish [150] Bay after Sunday, August 15th? A. No, I didn't.

Mr. Stabler: You may cross-examine.

Cross-Examination

By Mr. Baskin:

Q. Kurt, you said that you saw Mr. McKenzie there on the beach on August 9, 1948, at Red Fish Bay? A. Yes, sir.

Q. And you knew he was a stream watchman?

A. I didn't when I come in there; no, sir.

Q. But after you got into the bay you learned he was a stream watchman?

A. Yes; we learned he was.

Q. You saw the Fish and Wildlife boat there on the beach?

A. We didn't know it was a Fish and Wildlife boat.

Q. But you knew he was a stream watchman, didn't you? A. After he told us.

Q. He told you?

A. When we talked to him, he did; yes.

Q. When did he tell you that?

A. In the afternoon.

Q. That was the second time you went into the bay on August 9th? A. Yes. [151]

Q. And when you went up on the beach to see him? A. Yes.

Q. Up at the tent?

A. I wasn't up at the tent.

Q. You were there by the beach?

(Testimony of Kurt Nordgren.)

A. Yes.

Q. You were there and talked to him alone?

A. That is correct.

Q. How long did you say you were in Red Fish Bay on August 9th?

A. Only about half an hour.

Q. The first time? A. Yes.

Q. What time of the day did you say that was, about noon? A. Yes.

Q. And you left and came back again?

A. Yes.

Q. What time was that?

A. That was in the evening.

Q. Could you fix the time a little more than just in the evening?

A. Maybe it was around seven o'clock.

Q. That would be seven p.m.?

A. That is right.

Q. And how long did you stay in there at that time? [152]

A. It wasn't more than an hour, I don't think, if it was that long.

Q. Then you went out again?

A. That is right.

Q. You didn't return? A. No, sir.

Q. Then when was the next time that you went into Red Fish Bay; that is, into the closed area of Red Fish Bay? A. On the 13th.

Q. That is August the 13th? A. Yes, sir.

Q. And you said that was during the early noon?

A. Around noon, I would say.

(Testimony of Kurt Nordgren.)

Q. And that is the time that McKenzie went down to the boat and went aboard and had dinner with you; is that correct? A. Yes, sir.

Q. And you engaged in conversation with him at that time, did you? A. Yes, sir.

Q. And you knew at that time that he was a Fish and Wildlife stream watchman?

A. Yes, sir.

Q. Tell the jury approximately where Whale Bay is located.

A. Whale Bay is about two and a half hours northwest of Red Fish, going up the coast towards Sitka. [153]

Q. About what is the distance from Sitka to Whale Bay?

A. I think that is around a four-and-a-half to five-hour run.

Q. A four-and-a-half to five-hour run?

A. Yes.

Q. Did you catch any fish there?

A. Yes; on Saturday.

Q. And returned down to Red Fish Bay, did you not? A. That was on a Sunday.

Q. And you didn't fish there in Red Fish Bay on Sunday? A. No, sir.

Q. Then you went from Red Fish Bay to Petersburg? A. That is right.

Q. You said you didn't fish in Red Fish Bay on that occasion? A. No, I didn't.

Q. On Sunday? A. No, I didn't.

(Testimony of Kurt Nordgren.)

Q. But you saw Mr. McKenzie? A. Yes.

Q. Where was he?

A. Standing on the beach. He hollered for us to come get him.

Q. Did you get him?

A. In the skiff and took him out.

Q. He was on your boat on Sunday?

A. Yes, sir.

Q. And you engaged in conversation? Did he have any dinner [154] that day?

A. I think we had some lunch on there.

Q. He ate with you?

A. I know we ate. It was rough coming down. That is one of the reasons we went in the Bay. That is the time he got a fish from us.

Q. You didn't fish any more after you came from Whale Bay? A. No.

Q. And you went to Petersburg and sold your fish? A. That is right.

Q. And that is the fish you got prior to going to Red Fish Bay on August 15th?

A. That is right.

Q. You didn't know Mr. McKenzie before, did you, Nordgren? A. Before what?

Q. Before August the 9th? A. No, sir.

Q. You had never seen him before?

A. No, sir.

Q. Mr. Nordgren, you don't know any reason why Mr. McKenzie would come in and testify in this court as he did, do you?

(Testimony of Kurt Nordgren.)

A. I wouldn't say; no.

Q. Now, tell the jury whether or not you were convicted in the United States Commissioner's Court at Sitka, Alaska, for illegal fishing on or about July 27, 1944? [155]

A. That is right.

Q. You were convicted for illegal fishing?

A. I plead guilty. I was guilty.

Q. Tell the jury whether or not you were convicted in the United States Commissioner's Court at Sitka, Alaska, for illegal fishing on or about the 26th day of August, 1947?

A. That is right. I was inside the white markers about two hundred yards.

Q. You mean you were within the red markers of Red Fish Bay? A. Yes.

Q. And that area was closed at that time to fishing? A. That is right.

Mr. Baskin: That is all.

(Witness excused.)

Mr. Stabler: May it please the Court, may we have a short recess to see if we have any more witnesses out there?

The Court: Have you?

Mr. Stabler: I would like to see if he is out there.

The Court: You can just call him.

CECIL OWSLEY

called as a witness on behalf of the defendant, being first duly sworn, testified as follows on

Direct Examination

By Mr. Stabler:

Q. What is your name? [156]

A. Cecil Owsley.

Q. And where do you live?

A. Petersburg.

Q. How long have you lived down there?

A. Well, it was 1940—September 30, 1940—when I blew up my last boat and went into the Petersburg Hospital, and I have been there ever since.

Q. What is your occupation?

A. Fisherman.

Q. What kind of fishing do you do?

A. I troll and fish halibut.

Q. You have been a member of this jury up to now?

A. Yes.

Q. That is why you are up here?

A. Yes.

Q. How long have you known Kurt Nordgren?

A. I couldn't say exactly how long I have known him. I guess I have known who he was since probably 1943, somewhere around that.

Q. Do you know Richard Harris?

A. Yes.

Q. Do you know his brother Hugh?

A. Yes.

Q. How long have you known those two brothers?

(Testimony of Cecil Owsley.)

A. I don't know. I don't believe I have been introduced to [157] them. You get to know them by sight. Somebody will say, "That is Richard Harris," or Hugh Harris. That has been for four or five years.

Q. Do you know the general reputation at Petersburg of Kurt Nordgren for being a person of honesty and integrity? A. Yes.

Q. Do you know—yes or no——

A. Yes; I believe I do. I think his character is good.

Mr. Stabler: You may cross-examine.

Mr. Bailey: Your Honor, before we start examining this witness, I think the answer he made was irresponsible to the question.

The Court: That part of his answer, that he thought it was good, is stricken, and the jury is instructed to disregard it.

Mr. Stabler: Do you know his reputation for those traits?

A. Yes. Generally I would say he is all right, a good guy.

Mr. Bailey: We are not concerned with that.

A. I think he is honest. I don't think, if you would stack up a million dollars, that he would take a one of them.

The Court: You are not asked for your own opinion. The jury is instructed to disregard it.

A. The general reputation of Petersburg is that he is honest. If that is what the question is, why,

(Testimony of Cecil Owsley.)

that is my opinion of [158] the people's opinion of Kurt Nordgren in Petersburg.

Mr. Stabler: Also, how about his integrity?

A. It is good.

Mr. Stabler: That is all.

Mr. Bailey: I am going to ask that the part be stricken about his opinion.

The Court: I have already ruled, and the jury is instructed, that any part of the testimony of the witness based on his own opinion is stricken, and the jury is instructed to disregard it.

A. May I ask a question? How could I tell except through my opinion?

The Court: The law doesn't allow you to do that. It is not what you think, but what people of Petersburg think. It is not what you think. It is what people of Petersburg think. So, if you are going to testify as to reputation here, you have to confine yourself to what you know, not what you believe, but what you believe the people of Petersburg believe. That ought to be plain enough. You may proceed.

Cross-Examination

By Mr. Bailey:

Q. How long have you known Mr. Nordgren?

A. Since about 1943, somewhere around that.

Q. How well do you know him? [159]

A. I couldn't say too well. I know who he is. Like I said when I was called on the jury, he is not an intimate friend or anything of that kind. I know

(Testimony of Cecil Owsley.)

him on the street and dealings he has and knowing him as a citizen.

Q. Tell me this—is your testimony based on—his honesty and integrity—your opinion or what you know as to what people of Petersburg think?

A. As to what I know as to what people of Petersburg thing.

Q. Tell me, who have you talked to in Petersburg regarding his honesty and integrity?

The Court: Not honesty and integrity. His reputation for honesty and integrity.

Q. His reputation for honesty and integrity?

A. It is pretty hard for me to name the different people. I hadn't expected any such questions. But I have never heard anybody in Petersburg say anything against him.

Q. Answer my questions. Is your answer you can't tell me any person that you have talked to; is that right?

A. I wouldn't say that is right, because I know I have talked to some people about him. Off hand I couldn't state names. I don't make a habit of going around and talking to people and asking about people.

Q. Tell me what names—or can't you answer?

A. It is pretty hard to answer.

Q. Name me one. [160]

A. There would possibly be lots of names if I started naming people.

Q. I asked you the question—name me one.

(Testimony of Cecil Owsley.)

A. I have talked to my wife for one thing.

Q. How did you happen to talk to her about it? What was the occasion?

A. Just like I talk to her about any other one thing.

Q. How did you happen to be talking about Kurt Nordgren whom you didn't know other than to be pointed out to you?

A. How would you happen to talk about anything?

Q. I am asking the questions; you answer them.

A. Just like anybody, ordinary conversation. I talked to Curly McDonald. Before I had my boat built he worked for him.

Q. How did you happen to talk about him?

A. He wasn't available to work on my boat.

Q. Were you talking about labor or reputation for honesty and integrity?

A. Talking about labor.

Q. You can't tell me, outside of your own wife, anybody you talked to about Kurt Nordgren; is that true?

A. Honesty and integrity did not come up to be talked about. If it ever come up—it was not disputed; why talk about it?

Q. You don't know then; you haven't talked to anybody in Petersburg? [161]

A. I wouldn't say I haven't talked to anybody.

Q. Then you can't tell me anybody?

A. I am not going to tell you anybody.

(Testimony of Cecil Owsley.)

Q. Have you discussed this case with anyone?

A. Not before I come up; but I have talked to Kurt and the Harris boys about it.

Q. When is the first time you discussed it, before or after you were called on the jury?

A. After.

Mr. Bailey: Your Honor, I ask that the witness' testimony be stricken. He hasn't talked to anybody in Petersburg about the defendant's honesty and integrity. I move it be stricken.

Mr. Stabler: I think he has, but he hasn't named any particular individual. He seems to be a little uncertain as to what general reputation is, but I think he answered sufficiently to let it go to the jury.

The Court: It is rather difficult now to be able to say what his testimony amounts to on this point. It is obvious that he has misunderstood what reputation evidence means; and I don't know how much of his testimony relates to what his misconception of reputation testimony was, and it is pretty hard to analyze. He finally wound up by saying he wouldn't answer. If he won't answer, I don't see what good his testimony is, unless you want to examine him further. [162]

Mr. Baskin: This witness testified in certain words he had never talked with anyone about Kurt Nordgren's reputation for honesty and integrity.

The Court: I think he did say that. You have to consider that in connection with his other state-

(Testimony of Cecil Owsley.)

ments, some of which may appear to be contradictory. But if you want to examine him further——

Mr. Stabler: Yes. Did you ever hear anyone in Petersburg say anything against Kurt Nordgren for honesty and integrity? A. No.

Mr. Stabler: I think that is competent.

Mr. Bailey: I move it be stricken.

The Court: It is nevertheless admissible.

Mr. Bailey: What about his original testimony?

The Court: Do you wish to go further into his previous testimony, or do you wish to rely on negative testimony?

Mr. Stabler: What the negative testimony is, in a small town, I think that is material.

The Court: In view of the fact, that as the District Attorney mentioned a moment ago, that he testified that he did not recall talking to anyone about the defendant's reputation for honesty and integrity, it appears to me that the motion will have to be granted unless, as I say, you wish to go into that further. [163]

Mr. Stabler: Mr. Owsley, have you talked with people in Petersburg or heard people in Petersburg talk to you or anybody else concerning the honesty and integrity of Kurt Nordgren?

A. I think I have heard them talk about it. But to state specifically who I heard talk about it, that is different. I do know about his honesty and integrity myself, and I don't see that that is hearsay.

The Court: It is not what you know. Reputa-

(Testimony of Cecil Owsley.)

tion evidence is hearsay, what other people say, not what you think, not what you know. In other words, this is one class of testimony based entirely on hearsay, what other people say. If you don't know who has said it, you don't have to state who.

A. I don't know who said it. But in a small town like Petersburg, if a person's character and honesty is not all right, you hear it immediately and, if it is all right, you don't hear much. People don't go around and brag on people that are good, but criticize those who are bad.

Mr. Stabler: You have never heard anyone in Petersburg say that Kurt Nordgren was not a man of honesty and integrity? A. That is right.

The Court: As I recall your testimony, so far as your positive or affirmative testimony is concerned, you don't recall a single person with whom you talked about the defendant's [164] reputation; but have you talked—do you know that you have talked with people about his honesty and integrity before this case came up?

A. Yes; I have talked to people about his honesty and integrity before this case came up. Things like that, you don't remember; I don't. I didn't think about coming up and having to talk about him in particular. But where you live in a small community, almost all the fellows around you talk about, at one time or another——

The Court: The question still is, while it might be true that people don't talk about anybody unless

(Testimony of Cecil Owsley.)

something comes up, nevertheless it is impossible now for the Court to tell whether you testified that you have heard the reputation of the defendant for honesty and integrity discussed by the people of Petersburg, or whether you don't remember it?

A. Well, I believe that I have, but I couldn't put down any specific dates or people I have talked to. It is one of those things it is hard to put your finger on. Unless you talk to somebody for a certain purpose, it is hard to get on the stand and swear you talked about a certain thing.

The Court: You don't have to give dates or names.

A. He asked me for names.

The Court: If you don't know, you can state you don't know.

A. I don't know when. I have talked to some people about him. [165]

The Court: Do you know how his reputation for honesty and integrity came up for discussion?

A. Well, at the time I was building my boat it came up because at that time I worked at the shipyard and I asked about him down there. At the time I built my boat he wasn't working at the shipyard and he wasn't available.

The Court: What did you ask at that time?

A. I asked about the man, his character and integrity. If you have a man building your boat, you don't want a crook; you want a man who will give you full benefit of your money.

(Testimony of Cecil Owsley.)

The Court: Did you inquire about his honesty and integrity, or whether he was a good boat builder? A. Both.

The Court: But not as to whether he was a good boat builder?

A. I say—both.

The Court: Do you want to examine him further?

Q. (By Mr. Bailey): Did you know that Kurt Nordgren was convicted of illegal fishing in Sitka in 1947?

A. I knew he plead guilty to a charge over there.

Q. How did you know that?

A. That is hearsay.

Q. Did you hear that at the same time you heard about his reputation for honesty and integrity?

A. No.

Q. That was a different time. How about 1944, did you know he had been convicted in Sitka for the same charge? A. I don't remember dates.

Q. How many times did you hear he had been convicted?

A. I know he beat a charge. Is that the same time as now?

Q. Just answer the question.

A. I don't know if this is the same charge.

Q. 1944—you know when that was, don't you? Just answer the question.

A. I don't know what happened in 1944.

Mr. Bailey: That is all.

Mr. Stabler: That is all. We will rest, if the Court please.

The Court: Do you have any rebuttal?

Mr. Baskin: No, we don't, your Honor.

Whereupon, court recessed for ten minutes, reconvening as per recess, with all parties present as heretofore and in the absence of the jury; whereupon, the trial proceeded as follows:

Mr. Stabler: If the Court please, I would like at this time to offer evidence of the record at Sitka, a certified copy showing in Count I the charge of illegal fishing committed on August 9, 1948.

The Court: I know about that. How do you contend, [167] on what ground do you contend, that it is admissible?

Mr. Stabler: That it is so connected with the crime charged here that I think the Court should have that for a proper instruction.

The Court: Do you mean it is a defense to this charge?

Mr. Stabler: No, I don't. Evidence of another offense is not evidence, because of the charge over there, that he is guilty in the charge in this case.

The Court: Let me understand this. What was the result of the trial?

Mr. Stabler: Not guilty on three counts on these specific dates charged here that they went in there and fished in that particular area north of that red line on the second narrows.

The Court: As I understand, you contend there is some instruction I should give on that?

Mr. Stabler: Yes.

The Court: What is it?

Mr. Stabler: Here is the instruction I would like to propose.

The Court: I am not going to give any such instruction as that. I don't think it is in the case.

Mr. Stabler: We take exception to the Court's refusing to admit the certified record of the jury at Sitka acquitting [168] Kurt Nordgren, Hugh Harris and Richard Harris of three counts of illegal fishing in Red Fish Bay on Baranof Island, Alaska, on August 9, 1948, on August 15, 1948, and on August 16, 1948, and for the refusal of the Court to give the Defendant's Requested Instruction No. 1.

The Court: You don't contend that, if they had been convicted, the United States Attorney could introduce that evidence?

Mr. Stabler: No. But the testimony purports that those men were fishing illegally up there on those dates and, because of its nature, being connected with the charge for which the defendant is on trial, it should be segregated so the jury will know how to consider the testimony in this case involving those charges of illegal fishing, and in particular that the evidence of illegal fishing has been admitted here but may only be considered by the jury in so far as it may prove or tend to prove the charge of bribery for which the defendant is here on trial.

The Court: That is proper.

Mr. Stabler: And that they are not to consider

evidence of illegal fishing on those dates to show that at other times or other places the defendant committed any other offense or that that other offense is any evidence of guilt in this particular charge.

The Court: He is only on trial here on one charge. [169] What the jury may speculate on something else not bearing on this case——

Mr. Stabler: We take an exception. I would like to renew my motion for acquittal on the grounds which I stated at the conclusion of the plaintiff's testimony.

The Court: The motion is denied. Call the jury.

Whereupon, the jury returned and all took their places in the jury box; the jury was duly admonished, and court recessed until 1:30 p.m., April 19, 1948, reconvening as per recess, with all parties present as heretofore and the jury all present in the box;

Whereupon, Stanley D. Baskin, Assistant United States Attorney, made the argument to the jury in behalf of the Government; and thereafter, Howard D. Stabler, attorney for the defendant, made the argument to the jury in behalf of the defendant;

Whereupon, court recessed for ten minutes, reconvening as per recess, with all parties present as heretofore and the jury all present in the box;

Whereupon, Stanley D. Baskin, Assistant United States Attorney, made the closing argument to the jury in behalf of the Government;

Whereupon, court recessed until called, reconvening at 3:35 p.m., April 19, 1948, with all parties present as heretofore and the jury all present in the box; respective [170] counsel were furnished copies of the Court's Instructions to the Jury, and the Court read his Instructions to the Jury.

The Court: Any exceptions?

Whereupon, Mr. Baskin, Mr. Bailey, Mr. Stabler and the Court reporter approached the bench, out of hearing of the jury, and the following took place:

Mr. Stabler: The defendant excepts to the refusal of the Court to give Defendant's Requested Instruction No. 1 and, as to Instruction No. 4, subdivision (2), that question is one of law and not of fact, and the law shows——

The Court: You say Instruction 4?

Mr. Stabler: Instruction 4 (2).

The Court: That sets out the essential elements.

Mr. Stabler: That the law shows that McKenzie is not such an officer. The defendant further objects to Instruction No. 6, commencing with the word, "Accordingly, you are instructed that William McKenzie was, at the time charged in the indictment, a person acting for and on behalf of the United States in the function of conserving and protecting the commercial salmon fisheries of Alaska, under and by authority of the Department of the Interior." For the reason that the proof of his position is that he was not an officer or person subject to bribery under the provisions of the law under which the indictment was brought. Defend-

ant further objects to Instruction No. 13 for the reason that it duplicates No. 12 and unduly [171] emphasizes the effect of previous convictions.

The Court: That refers to the witness. One refers to witnesses, and the other refers to the defendant.

Mr. Stabler: I think that is all.

Whereupon, Mr. Baskin, Mr. Bailey, Mr. Stabler and the court reporter withdrew from the bench and were again within hearing of the jury.

The Court: Ladies and gentlemen, if you agree upon a verdict before 5:00 p.m., the Court will receive it from you in open court. If, however, you do not agree upon a verdict until later, you will have the Foreman sign it, seal it in this envelope and keep it in his possession unopened. You may then leave the jury room and separate, but no juror shall say anything about the verdict. All of you must be in the jury box at 10:00 a.m. tomorrow morning, at which time the verdict will be received by the Court and read in the presence of the jury. The bailiffs may now be sworn.

Whereupon, the bailiffs were duly sworn to take charge of the jury, and the jury retired to the jury room at 3:56 p.m. in charge of the bailiffs to deliberate upon a verdict; whereupon Court adjourned until 10:00 o'clock a.m., April 20, 1949, reconvening as per adjournment with all parties present as heretofore and the jury all present in the box; whereupon, the following proceedings were had:

The Court: Ladies and gentlemen of the jury, have [172] you arrived at a verdict?

Mr. Foreman: We have, your Honor.

The Court: You may hand it to the Clerk. You may read the verdict.

Whereupon, the verdict was read by the Clerk, finding the defendant guilty as charged in the indictment.

(End of record.) [173]

United States of America,
Territory of Alaska—ss.

I, Mildred K. Maynard, Official Court Reporter for the hereinabove entitled Court, do hereby certify:

That as such Official Court Reporter I reported the above-entitled case, viz. The United States of America vs. Kurt Gustaf Nordgren, No. 2505-B of the files of said court;

That I reported said case in shorthand and myself transcribed said shorthand notes and reduced the same to typewriting;

That the foregoing pages numbered 1 to 162, both inclusive, contain a full, true and correct transcript of all the testimony and proceedings at the trial of the above-entitled case, to the best of my ability.

Witness, my signature this 2nd day of July, 1949.

/s/ MILDRED K. MAYNARD,

Official Court Reporter, U. S. District Court, First
Division, Territory of Alaska.

Copy hereof received July 5, 1949.

/s/ STANLEY D. BASKIN,

Assistant U. S. Attorney.

[Endorsed]: Filed July 5, 1949. [174]

[Title of District Court and Cause.]

PRAECIPE

To the Clerk of the above entitled court, at Juneau, Alaska:

Please prepare and transmit to the United States Court of Appeals for the Ninth Circuit, to be filed and docketed in said appellate court, within the time provided by law, for use on appeal in the above entitled action, the following transcript of record on appeal:

1. Indictment.
2. Verdict.
3. Judgment and commitment.
4. Motion and supplemental motion for new trial.
5. Order denying motion and supplemental motion for new trial.
6. Notice of Appeal.
7. Reporter's Original Transcript of the trial, properly certified, including all evidence, exhibits and instructions, and objections to instructions, and defendant's requested Instruction No. 1; but not including opening statements of counsel, examination of jurors, or arguments of counsel.
8. This praecipe.

Dated: Juneau, Alaska, May 24, 1949.

/s/ HOWARD D. STABLER,
Attorney for Appellant.

Copy hereof received May 24, 1949.

/s/ STANLEY D. BASKIN,
Asst. U. S. Attorney.

Certified to be the Original Praecipe.

/s/ J. W. LEIVERS,
Clerk,

[Seal]: By /s/ P. D. E. McIVER,
Deputy.

[Endorsed]: Filed May 24, 1949. [175]

[Title of District Court and Cause.]

COURT'S INSTRUCTIONS TO THE JURY

No. 1

Ladies and Gentlemen of the Jury:

We have now reached the point in the trial of this case where it becomes the duty of the Court to instruct you as to the law that will govern you in your deliberations upon the facts of this case.

When you were accepted as jurors in this case you obligated yourselves by your oaths to well and truly try the matter in issue between the Government of the United States and the defendant, and a true verdict render according to the law and the evidence as given to you on the trial. That oath means that you will not be swayed by passion, sympathy or prejudice, and that your verdict will be the result of a careful consideration of all the evidence and the instructions of the Court as to the law.

It is not for you to say what the law is or should be regardless of any idea you may have in that respect. It is the exclusive province of the Court to declare the law in these instructions, and it is your duty as jurors to follow them in your deliberations and in arriving at a verdict.

On the other hand it is the exclusive province of the jury to declare the facts in the case, and your decision in that respect, as embodied in your verdict, when arrived at in a regular and legal manner, is final and conclusive upon the Court. Therefore probably the greater ultimate responsibility in the trial of the case rests upon you, because you are the triers of the facts.

No. 2

The indictment in this case charges that the defendant on or about August 12, 1948, in Division Number One of the Territory, committed the crime of bribery by offering and giving \$200 in lawful money of the United States to William McKenzie, a person then and there acting for and on behalf of the United States in an official function, under and by authority of the Department of the Interior, in observing the area of Red Fish Bay, then and there closed to commercial fishing for salmon, and in apprehending and arresting and causing the arrest and prosecution of all persons fishing illegally for salmon in said closed area, and in reporting and disclosing such violations to law enforcement officials, then and there knowing the said William McKenzie to be such a person, with the intent to

influence and induce the said William McKenzie to unlawfully refrain from arresting or causing the arrest or prosecution of the defendant for fishing illegally in such closed area and to omit to report and disclose such violation to law enforcement officials.

No. 3

Bribery, so far as material to this case, is defined by law as follows:

“Whoever shall offer or give * * * any * * * money * * * to any * * * person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof * * * with intent to influence him * * * or induce him to do or omit to do any act in violation of his lawful duty, shall be fined or imprisoned,” etc.

No. 4

The essential elements of the crime charged, all of which must be proved beyond a reasonable doubt before you can convict the defendant, are:

(1) That on or about August 12, 1948, the defendant offered or gave \$200 in lawful money of the United States to William McKenzie;

(2) That William McKenzie was then and there a person acting for or on behalf of the United States in an official function, under and by the authority of the Department of the Interior;

(3) That the defendant knew that the said William McKenzie was then and there acting as such;

(4) That the offer was made with the intent to influence and induce the said William McKenzie to refrain from performing said function.

No. 5

It is admitted that by a regulation of the Department of the Interior that part of Red Fish Bay involved in this case was an area closed to commercial fishing for salmon, and I instruct you that Red Fish Bay is in Division Number One of the Territory, and that the Department of the Interior is a department of the United States.

No. 6

You are instructed that at and before the time referred to in the indictment in this case it was the function of the United States, acting through the Department of the Interior, to conserve and protect the commercial fisheries of Alaska for the benefit of all the citizens of the United States, by adopting such means, by regulation or otherwise, as it deemed necessary; that among the means adopted was the closure of the upper part of Red Fish Bay to commercial fishing for salmon, and the appointment of William McKenzie as fishery patrol agent to prevent such commercial fishing by arresting or causing the arrest of any person fishing or attempting to fish therein. Accordingly, you are instructed that William McKenzie was, at the time charged in the indictment, a person acting for and on behalf of the United States in the function of conserving and protecting the commercial salmon fisheries of

Alaska, under and by authority of the Department of the Interior.

No. 7

Therefore, if you find from the evidence beyond a reasonable doubt that the defendant on or about August 12, 1948, offered or gave \$200 to William McKenzie, then and there a person acting for or on behalf of the United States, under and by authority of the Department of the Interior, in apprehending or arresting or causing the apprehension, arrest or conviction of persons fishing commercially for salmon in the closed waters of Red Fish Bay, knowing that he was such a person, with the intent to influence or induce the said William McKenzie to refrain from apprehending or arresting or causing the apprehension, arrest or conviction of said defendant if he should fish commercially for salmon in such waters, or to omit to report or disclose such violation to law enforcement officials, you should convict him; but if you do not so find or have a reasonable doubt thereof, you should acquit him.

No. 8

The law presumes every person charged with crime to be innocent and, hence, the defendant is entitled to the benefit of this presumption until it has been overcome by evidence beyond a reasonable doubt. This rule as to the presumption of innocence is a humane provision of the law intended to guard against the conviction of innocent persons, but it is not intended to prevent the conviction of any person

who is in fact guilty or to aid the guilty to escape punishment. [179]

No. 9

Many attempts have been made to define the term reasonable doubt, but it is doubtful whether they are any clearer than the words themselves. A reasonable doubt may, however, be defined as one arising from a consideration of all the evidence or lack thereof. It is not just any vague, speculative or imaginary doubt which may occur to you, nor a mere excuse that you may conjure up without foundation or out of sympathy for the accused, nor does it mean the bare possibility of innocence. It is an actual, substantial and real doubt. If after an impartial comparison and consideration of all the evidence, or lack thereof, you can truthfully say that you are not satisfied of defendant's guilt, you have a reasonable doubt; but if you can truthfully say that you have an abiding conviction—that is, a strong and persisting belief—of the defendant's guilt, such as you would be willing to act upon, if you were under no compulsion to act, in the more important affairs of your own life, then you have no reasonable doubt.

No. 10

Subject to the law as contained in these instructions, you are also the sole and exclusive judges of the credibility of the witnesses and of the effect and value of the evidence.

You are, however, instructed that your power of

judging the effect of evidence is not arbitrary but is to be exercised by you with legal discretion and in subordination to the rules of evidence; that the oral admissions of a party should be viewed with caution; that evidence is to be estimated not only by its own intrinsic weight but also according to the evidence which it is in the power of one side to produce and of the other to contradict and, therefore, if weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory evidence was within the power of the party offering it, such evidence should be viewed with distrust.

Before reaching a verdict you will carefully consider and compare all the testimony. In determining the credibility of witnesses and the weight to be given their testimony, you may take into consideration the interest that any witness may have in the outcome of the case, the motive he may have for testifying falsely with regard to any material matter, the conduct and demeanor [180] of the witness while on the stand; his manner of testifying, his apparent candor, the means and opportunity he had to learn or ascertain the facts to which he testified: the probability or improbability of his testimony; his prejudice or bias against or disposition to favor the Government or the defendant; his inclination to speak truthfully or otherwise, his intelligence or lack thereof; the reasonableness or unreasonableness of his testimony; the extent to which he is corroborated or contradicted on ma-

terial matters; and all the other facts and circumstances in evidence which shed light upon the witness' credibility.

You are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your minds against a less number or against a presumption or other evidence satisfying your minds. The direct evidence of one witness whom you find to be entitled to full credit is sufficient for the proof of any fact in this case. A witness wilfully false in one part of his testimony may be distrusted in other parts. Whenever it is possible you will reconcile conflicting or inconsistent testimony, but where it is not possible to do so, you should give credence to that testimony which, under all the facts and circumstances of the case, appeals to you as the most worthy of belief.

You are also instructed that the opening statements and the arguments of counsel are not evidence, and they are not binding upon you. You may, however, be guided by them if you find that they are supported by the evidence and appeal to your reason and judgment.

In considering your verdict you are instructed that any testimony which has been ordered stricken by the Court should not be considered by you for any purpose.

I also instruct you that the matter of punishment or leniency is not your concern and should not be considered by you for any purpose. Your duty consists wholly in determining the guilt or inno-

cence of the defendant. The matter of punishment and grounds for the exercise of leniency are exclusively for the Court. [181]

No. 11

The law makes the defendant in a criminal action a competent witness. When he becomes a witness and testifies, he is deemed to be a witness for all purposes and his testimony and his credibility are to be determined by applying the same tests to them as in the case of any other witness. Therefore, the use of the word "witness" or "witnesses" in these instructions includes the defendant except where otherwise specified or indicated. In determining his credibility, you have a right to take into consideration the fact that he is the defendant and that his interest in the result of your verdict is great, and give his testimony, considered in connection with all the other evidence, such weight as you believe it entitled to.

No. 12

There is testimony in this case that the defendant has been previously convicted of other crimes. The Court instructs you that such evidence is not to be considered by you as evidence of the defendant's guilt of the crime for which he is now on trial, but is only to be considered by you in determining his credibility as a witness and the weight and value that you may give to his testimony.

No. 13

You are instructed that if you find from the evi-

dence that any witness has been convicted of crime, you may take that fact into consideration in determining his credibility and the weight and value you will give to his testimony.

No. 14

Testimony has been admitted showing, or tending to show, that the defendant fished unlawfully in Red Fish Bay. This evidence was admitted not to prove that the defendant violated the fisheries law, but to be considered by you in determining, in connection with all the other evidence, whether the defendant committed the crime charged in the indictment. [182]

No. 15

The testimony concerning the defendant's previous good general reputation for honesty and integrity in Petersburg, Alaska, has been admitted not for the purpose of showing that the defendant did not commit the crime charged in the indictment but to show the improbability of his having done so. General reputation is not what a few people think but what people generally think. It is for you to say whether the defendant's good general reputation for honesty and integrity in the community of Petersburg has been proved. If you find that it has, you may consider it along with all the other facts and circumstances and give it such weight as you think it entitled to.

No. 16

The law requires that all twelve jurors must agree upon a verdict before one can be rendered.

While no juror should yield a sincere conviction, founded upon the law and the evidence of the case merely to agree with other jurors, every juror, in considering the case with fellow jurors, should lay aside all undue pride or vanity of personal judgment, and should consider differences of opinion, if any arise, in a spirit of fairness and candor, with an honest desire to give at the truth, and with the view of arriving at a just verdict because the law contemplates that the verdict shall be the product of the collective judgment of the entire jury.

Accordingly, no juror should hesitate to change the opinion he has entertained, or expressed, if honestly convinced that such opinion is erroneous, even though in so doing he adopts the views and opinions of other jurors. But before a verdict of guilty can be rendered, each of you must be able to say, in answer to your individual conscience, that you have arrived at a settled conviction, based upon the law and the evidence of the case and nothing else, that the defendant is guilty. [183]

No. 17

You are to consider these instructions as a whole. It is impossible to cover the entire case with a single instruction, and you should not single out one particular instruction and consider it by itself or separately from or the exclusion of all the other instructions.

As you have been heretofore instructed, your duty is to determine the facts of the case from the evidence submitted, and to apply to these facts the

law as given to you by the Court in these instructions. The Court does not, either in these instructions or otherwise, wish to indicate how you shall find the facts or what your verdict shall be, or to influence you in the exercise of your right and duty to determine for yourselves the effect of evidence you have heard or the credibility of witnesses, because the responsibility for the determination of the facts in this case rests upon you and upon you alone.

No. 18

Upon retiring to your jury room you will elect one of your number foreman, who will speak for you and sign the verdict unanimously agreed upon.

You will take with you to the jury room these instructions, together with one form of verdict. If you find the defendant guilty, you will draw a line through the blank space before the word "guilty"; but, if you do not so find, you will write the word "not" in such blank space.

When you have agreed upon a verdict and your foreman has dated and signed it, you will return it into court in the presence of the entire jury, together with these instructions.

Given at Juneau, Alaska, this 19th day of April 1949.

GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed March 20, 1949. [184]

Defendant's Requested Instruction No. 1

The defendant has been tried before a jury and found not guilty of three charges of illegal fishing at Red Fish Bay, on Baranof Island, Alaska, namely:

Count 1, which charged him with fishing on August 10, 1948, at Red Fish Bay, on Baranof Island, Alaska, for commercial purposes, said area being then and there closed to such fishing;

Count 2, which charged him with fishing on August 15, 1948, at Red Fish Bay, on Baranof Island, Alaska, for commercial purposes, said 15th day of August, 1948, being a Sunday, and said area being then and there closed to such fishing; and

Count 3, which charged him with fishing on August 16, 1948, at Red Fish Bay, on Baranof Island, Alaska, for commercial purposes, said area being then and there closed to such fishing.

You are instructed that the defendant cannot again be tried on charges of illegal fishing in Red Fish Bay, on Baranof Island, Alaska, on August 10th, August 15th or August 16th, 1948. The evidence of illegal fishing by the defendant at Red Fish Bay, on Baranof Island, Alaska, on those dates has been admitted, and may only be considered by the jury, insofar as it may prove, or tend to prove, the charge of bribery for which the defendant is here on trial; and you are further instructed that you are not to find the defendant guilty of the charge of bribery because of evidence showing, or tending to show, that he may have committed other offenses then, or at other times or places. [185]

[Title of Court and Cause.]

MOTION FOR ORDER AND ORDER EXTENDING TIME FOR FILING TRANSCRIPT OF RECORD AND DOCKETING CAUSE IN APPELLATE COURT

Comes now the above named defendant and moves the court for an order extending the time for filing the transcript of record and docketing the within cause in the appellate court for the period of ninety days from May 12, 1949, on which day notice of appeal was filed herein, for the reason that the court reporter is unable to prepare a transcript of the evidence within the forty days provided by law for filing the transcript of record and docketing the cause on appeal.

This motion is based upon the record and files herein, and upon the statements of the said court reporter available in support of this motion.

Dated: Juneau, Alaska, June 8, 1949.

HOWARD D. STABLER,
Defendant's Attorney.

ORDER

On reading and filing the above motion it is Ordered: that the time for filing the transcript of record and docketing the within cause on appeal in the appellate court be, and it is hereby, extended for the period of ninety days from May 12, 1949.

Done in open court at Juneau, Alaska, the 10th day of June, 1949.

GEORGE W. FOLTA,
District Judge.

Copy delivered to U. S. Atty.'s office June 8, 1949 HDS.

Copy delivered to U. S. Atty's office June 8, day of June, 1949.

P. J. GILMORE, JR.,
U. S. Attorney.

Filed in Dist. Court, Terr. of AAA. June 8, 10:10 a.m., 1949. First Division at Juneau.

J. W. LEIVERS,
Clerk,

By LOIS P. ESTEPP,
Deputy.

[Endorsed]: Filed June 8, 1949. [186]

In the District Court for the Territory of Alaska,
Division Number One. At Juneau.

No. 2505-B

UNITED STATES OF AMERICA,

vs.

KURT GUSTAF NORDGREN.

SUPPLEMENTAL PRAECIPE

To the Clerk of the above entitled court at Juneau,
Alaska.

Please prepare and transmit to the United States Court of Appeals for the Ninth Circuit, to be filed and docketed in said appellate court, within the time provided by law, for use on appeal in the above entitled action, the following additions to the transcript of record on appeal:

9. Court's Instructions to the jury, and Defendant's Requested Instruction No. 1.

10. Motion and order extending time for filing transcript of record and docketing cause in appellate court entered June 10, 1949.

Dated: Juneau, Alaska, June 13, 1949.

HOWARD S. STABLER,
Attorney for Appellant.

Copy hereof received June 15, 1949.

STANLEY D. BASKIN,
U. S. Attorney.

Certified to be the original Supplemental Prae-
cipe.

J. W. LEIVERS,
Clerk.

[Seal] By /s/ P. D. E. McIVER,
Deputy.

[Endorsed]: Filed June 15, 1949. [187]

[Title of District Court and Cause.]

CERTIFICATE

I, James W. Leivers, Clerk of the District Court for the Territory of Alaska, First Division thereof, do hereby certify that the foregoing and hereto attached 187 pages of typewritten matter, numbered from 1 to 187, both inclusive, constitute a full, true and complete copy, and the whole thereof, of the record prepared in accordance with the praecipe of the Appellant on file herein and made a part hereof, in Cause No. 2505-B, wherein Kurt Gustaf Nordgren is Defendant-Appellant and the United States of America is Plaintiff-Appellee, as the same appears of record and on file in my office; that said record is by virtue of a Notice of Appeal in this cause and the return thereof in accordance therewith.

And I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certification amounting to (\$10.40) Ten Dollars and Forty Cents has been paid to me by counsel for Appellant.

In Witness Whereof, I have hereunto set my hand and the seal of the above-entitled court this 8th day of July, 1949.

JAMES W. LEIVERS,

Clerk of the District Court.

[Seal] By /s/ P. D. E. McIVER,

Deputy.

[Endorsed]: No. 12294. United States Court of Appeals for the Ninth Circuit. Kurt Gustaf Nordgren, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Division Number One.

Filed July 18, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12294

KURT GUSTAF NORDGREN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

DESIGNATING ENTIRE RECORD TO BE
PRINTED AND STATEMENT OF POINTS

Comes now the above named appellant Kurt Gustaf Nordgren and respectfully designates the entire record on appeal to be printed for consideration on appeal; and submits the following Statement of Points on which he intends to rely on his appeal:

1. The evidence submitted on the part of the prosecution showed that William McKenzie accepted a bribe from the defendant, and was therefore an accomplice in the commission of the offense charged, and there was no corroboration of the accomplice testimony as required by section 66-13-59 Alaska Compiled Laws Annotated 1949; and the court failed to instruct the jury that the testimony of an accomplice ought to be viewed with distrust, as required by subdivision fourth of section 58-5-1 ACLA 1949.

2. The prosecution failed to show or prove the offense of bribery charged in the indictment, or any offense, because the evidence submitted failed to show that William McKenzie, the alleged bribe

taker, was an officer of the United States, or a person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government, as charged in the indictment, within the meaning of section 91, Title 18, United States Code.

3. Instruction No. 6 given by the court was erroneous in this: The Court charged that William McKenzie was, at the time charged in the indictment,

“a person acting for and on behalf of the United States in the function of conserving and protecting the commercial salmon fisheries of Alaska, under and by authority of the Department of the Interior”

whereas section 91, Title 18, U. S. Code, defining the offense charged, requires that said function to be an “official function”.

4. Instruction No. 7 given by the court was erroneous in this: The Court charged that,

“If you find from the evidence beyond a reasonable doubt that the defendant on or about August 12, 1948, offered or gave \$200.00 to William McKenzie, then and there a person acting for and on behalf of the United States, under and by authority of the Department of the Interior, in apprehending or arresting or causing the apprehension, arrest or conviction of persons fishing commercially for salmon in the closed waters of Red Fish Bay, knowing that he was such a person . . . you should convict him”

in that it directs a conviction if the defendant William McKenzie was "a person acting for or on behalf of the United States, under and by authority of the Department of the Interior", and performing the duties stated, whereas section 91, Title 18, U. S. Code, defining the alleged offense charged in the indictment would require the said William McKenzie to be acting for and on behalf of the United States in an "official function", under and by authority of the Department of the Interior.

5. The court erred in denying the defendant's motion for acquittal at the conclusion of the Government's evidence, and at the conclusion of all the evidence.

6. The court erred in refusing to give the defendant's requested Instruction No. 1.

7. The Government's evidence failed to show that said William McKenzie had the duty or authority to apprehend or arrest or cause the apprehension or arrest or conviction of persons fishing commercially for salmon in the closed waters of Red Fish Bay for the reason that the prosecution failed to show that said William McKenzie was an officer or employee of the Fish and Wild Life Service of the Department of the Interior "designated by the Director" of the Fish and Wild Life Service of the Department of the Interior so as to be a peace officer as required by section 227, Title 48, U. S. Code; or authorized by the Secretary of the Interior to enforce the fisheries laws and regulations as prescribed by section 192, Title 48, U. S. Code, or was

a law enforcement officer as prescribed by section 248a, Title 48, U. S. Code.

8. The verdict is contrary to the weight of the evidence.

9. The verdict is not supported by substantial evidence.

10. The court erred in denying the defendant's motion and supplemental motion for new trial.

11. Other manifest error appearing of record to which objection was taken and exception reserved.

Dated: July 12, 1949.

/s/ HOWARD D. STABLER,
Appellant's Attorney.

Copy hereof received July 12, 1949.

/s/ STANLEY D. BASKIN,
Assistant U. S. Attorney.

[Endorsed]: Filed July 18, 1949.